IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.14764-CII of 2015 in/and
FAO No.4750 of 2015 (O&M)
Date of Decision: 22.02.2019.

Vimlesh @ Bimlesh and others. ...Appellants

Versus

Ramesh and others. ....Respondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. Vivek K. Thakur, Advocate for the appellants.

Service of respondent Nos.1 and 2 dispensed with vide order dated 22.12.2016.

Mr. Sandeep Suri, Advocate for respondent No.3.

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<u>B.S.Walia, J (Oral)</u>.,

<u>CM No.14763-CII of 2015</u>

1. For the reasons as are mentioned in the application, the same is allowed. Delay of 376 days in re-filing of the appeal is condoned, subject to all just exceptions.

<u>CM No.14764-CII of 2015</u>

2. For the reasons as are mentioned in the application, the same is allowed. Delay of 126 days in late filing of the appeal is condoned, subject to all just exceptions.

<u>FAO No.4750 of 2015</u>

3. Appeal has been filed by the wife, parents and minor daughter of Dharmender, who died in a motor vehicular accident on 23.10.2011, claiming enhancement of compensation of ₹41,64,120-/-, awarded by the

learned Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal').

4. Learned counsel for the appellants contended that the appeal was liable to be allowed, award modified and compensation payable enhanced by taking into account 50% of the established income of the deceased as against 30% taken into account by the learned Tribunal towards future prospects while computing the compensation payable. Learned counsel further contended that the wife and minor daughter of the deceased were entitled to award of ₹40,000/- each on account of loss of spousal/parental consortium besides the appellants were also entitled to award of ₹15,000/- on account of funeral expenses and like amount on account of loss of estate.

5. Per contra, learned counsel for respondent No.3/Insurance Company has fairly not opposed the claim of the appellants for taking into account 50% of the established income of the deceased towards future prospects while computing the compensation payable nor the claim with regard to payment of ₹40,000/- to the wife on account of loss of spousal consortium and like amount to the minor daughter on account of loss of parental consortium besides ₹15,000/- on account of funeral expenses and like amount on account of loss of estate.

6. I have considered the submissions of the learned counsel.

7. Admittedly the deceased was 33 years of age and was employed as a Sepoy in Indian Army. As per paragraph No.61 (iii) of the decision of Hon'ble the Supreme Court in <u>National Insurance Company</u>

Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009, an addition of 50% of the established income of the deceased minus the tax component should be made towards future prospects, where the deceased had a permanent job and was below the age of 40 years. Since in the instant case the deceased was 33 years of age and was working against a permanent job in the Indian Army, therefore, 50% of the established income of the deceased minus the tax component is to be added towards future prospects while computing compensation.

8. Likewise, in view of paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), the appellants are held entitled to ₹15,000/- on account of funeral expenses and like amount on account of loss of estate. The widow of deceased is held entitled to ₹40,000/- on account of loss of spousal consortium, while as per paragraph No.8.7 of the decision in Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhru Ram, 2018 (4) RCR (Civil) 333, the daughter of the deceased is held entitled to ₹40,000/- on account of loss of parental consortium.

9. In the circumstances, the appellants are held entitled to the following compensation:-

Sr. No.	**Head**	**Amount assessed by the Tribunal**	**Amount assessed by this Court**
1	Income	₹22,164/-	₹22,164/-
2	Future Prospects	₹6649/- i.e. 30% of ₹22,164/-	₹11,082/- i.e. 50% of ₹22,164/-
3.	Total Income	₹28,813/-	₹33,246/-
4.	Multiplier applied	16	16
5.	Deduction	1/4th of ₹28,813/- i.e. ₹7203/-	1/4th of ₹33,246/- i.e. ₹8311/-
6.	Dependency	₹21610x12x16=₹41,49,120/-	₹24935x12x16=₹47,87,520/-

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
7.	Funeral Expenses	Nil.	₹15,000/-
8.	Loss of Estate	Nil.	₹15,000/-
9.	Loss of consortium to widow	₹5,000/-	₹40,000/- to widow, ₹40,000/- to the minor daughter of the deceased.
10.	Transportation etc.	₹10,000/-	Nil.
	Total	₹41,64,120/-	₹48,97,520/-

10. Accordingly, as against the compensation of ₹41,64,120/- awarded by the Tribunal, the appellants are held entitled to award of compensation of ₹48,97,520/- along with interest @ 9% per annum w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid.

11. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares determined by the Tribunal after first making payment of ₹80,000/- towards loss of spousal/parental consortium to the wife and minor daughter of the deceased i.e. appellant Nos.1 and 4. The Insurance Company shall make the payment to the appellants after making deduction of the tax liability, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

12. Accordingly, appeal is allowed and award dated 17.07.2013, passed by the learned Tribunal is modified to the extent as noted above.

(B.S.Walia)
Judge

22.02.2019
rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No