IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5698 of 2015 (O&M)
Date of Decision: September 30, 2019

Jangbir Singh and another

...... Appellants(s)

Versus

Sanjay Kumar and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Priyanka Malik, Advocate for
Mr. Abhimanyu Singh, Advocate
for the applicant-appellants.

Service upon respondents no.1 & 2 dispensed with
vide order dated 21.07.2016.

Mr. S.P. Arora, Advocate
for respondent no.3.

****

LISA GILL, J.

This appeal has been filed seeking enhancement of the compensation awarded to the claimants vide award dated 01.04.2015, passed by learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal) on account of death of their son namely Yogesh Yadav.

Appellants-claimants who are the parents of the deceased Yogesh Yadav, filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Yogesh Yadav, due to the injuries suffered by him in the motor vehicle accident, which took place on 23.12.2012. Deceased was claimed to be 20 years, engaged in mobile repair work and earning a sum of Rs.16,748/- per month. Reliance was placed upon an income tax return Ex.P-9.

Learned Tribunal on considering the evidence on record concluded that Yogesh Yadav lost his life due to the injuries received by him in the accident in question, which took place on 23.12.2012, due to the rash and negligent driving of the offending car bearing registration No. RJ-02CB-1341, by its driver Sanjay Kumar - respondent no.1. This finding has attained finality. Income tax return Ex.P-9 was ignored by the learned Tribunal as it was filed after the death of Yogesh Yadav. Learned Tribunal while assessing the income of the deceased to be Rs.5,000/- per month with reference to the minimum wage of an unskilled labourer and accepting the deceased to be 20 years old, awarded a sum of Rs.6,65,000/- as compensation to the claimants, which is detailed as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income	5,000/- per month
2.	Income after deducting 1/2 as personal living expenses of the deceased	5000 - 1/2 = 2,500/- per month
3.	Dependency after applying multiplier of 18	2,500 x 12 x 18 = 5,40,000/-
4.	Loss of love and affection	1,00,000/-
5.	Funeral expenses	25,000/-
	Total	**6,65,000/-**

Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants argues that income of the deceased has been wrongly assessed. Income tax return Ex.P9 has been wrongly ignored. The deceased had cleared his secondary examination and was indeed engaged in the work of mobile repair. Moreover, increment on account of future prospects has not been awarded, though, it is stated that the compensation under the conventional heads be re-worked in terms of the judgment of Hon'ble Supreme Court **National Insurance Company Limited v. Pranay Sethi and others,** ***2017(16) SCC 680*** and ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors*****. 2018(4) RCR Civil 333.** It is thus prayed that the present appeal be allowed and the total compensation awarded to the claimants be enhanced.

Learned counsel for the insurance company, however, refutes the above said arguments while submitting that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no enhancement. Dismissal of this appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

There is no dispute regarding death of Yogesh Yadav due to the injuries received by him in the accident in question, which took place on 23.12.2012, due to the rash and negligent driving of the offending car bearing registration No. RJ-02CB-1341, by its driver Sanjay Kumar - respondent no.1. It is further a matter of record that the deceased was 20 years old at the time of the accident. He had cleared his secondary examination as is evident from the secondary examination certificate Ex.P-4. A perusal of the file reveals that learned Tribunal has rightly ignored the income tax report Ex.P-9 as it was filed on 30.09.2013 i.e. after theccurrence of the accident on 23.12.2012. In fact the income tax return was filed even after the institution of the claim petition on 19.07.2013. Learned counsel for the appellants is unable to deny that there is no other income tax return filed by the deceased prior to the accident. There is no cogent evidence on record to indicate that the deceased was engaged in the work of mobile repair. However, keeping in view the fact that the deceased had cleared his secondary examination, it is considered just and appropriate to assess income of the deceased to be Rs.7,000/- per month instead of Rs.5,000/- per month, which is the minimum wage available to an unskilled labourer in the State of Haryana at the time of the accident.

Keeping in view the judgment of the Hon'ble supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680,*** 40% increment has to be afforded on account of future prospects. Deduction of 1/2 was correctly effected by learned Tribunal. As the deceased was admittedly 20 years old at the time of the accident, multiplier of 18 was correctly applied by learned Tribunal. Instead of a sum of Rs.25,000/- awarded towards funeral expenses, the appellants are entitled to a sum of Rs.15,000/- towards funeral expenses. Additionally, they are entitled to a sum of Rs.15,000/- towards loss of estate and a sum of Rs.40,000/- on account of loss of filial consortium. They are not entitled to a sum of Rs.1,00,000/- towards loss of love and affection, awarded by the learned Tribunal. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.*** **2018(4) RCR Civil 333**, as well as decision dated 14.03.2019 of this Court in FAO-2110-2016, title ***Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others***.

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income	7,000 x 12 = 84,000/- per annum
2.	Income after deducting 1/2h as personal living expenses of the deceased	84,000 - 1/2 = 42,000/-
3.	Total income after addition at the rate of 40% on account of future prospects	42,000 + 16,800 (42,000 x 40%) = 58,800/-
4.	Dependency after applying multiplier of 18	58,800 x 18 = 10,58,400/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of filial consortium to the appellants	40,000/-
	Total	**11,28,400/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount, from the date of filing of the claim petition till realization.

Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

September 30, 2019.
Sunil

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