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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.8503 of 2014 (O&M)
Date of Decision:19.10.2019

SAVITRI AND ORS ......Appellants
Vs
DEEPAK KUMAR AND ORS ......Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Punshpinder Kaur Advocate for
Mr. R.D. Yadav, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for respondent No.3/Insurance Company.

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RAJ MOHAN SINGH, J. (Oral)

[1]. This appeal has been preferred by the appellants/claimants for enhancement of compensation on account of death of Ram Dayal in a vehicular accident.

[2]. Brief facts are that the accident in question took place on 31.05.2010, when Ram Dayal was coming to Haryana after loading the truck from Mokan Sheela. At about 1.00 a.m. in the night, he stopped the vehicle opposite Nagamtia Hotel G.T. Road. In the meanwhile, offending truck came from eastern side in a rash and negligent manner, which was loaded with sticks (bans) and struck against the standing truck of the deceased. The standing truck of the deceased in turn struck against

another truck, which was parked ahead of his truck. Ram Dayal sustained injuries on his person and died in the Hospital due to fatal injuries received by him. The claimants are widow, daughters and son.

[3]. The Motor Accident Claims Tribunal, Rewai (hereinafter to be referred as 'the Tribunal) held that the accident in question took place due to rash and negligent driving of the offending truck bearing regn. No.JH-02K-8874 under issue No.1. Under issue No.2, the claimants were held entitled for compensation. Respondent No.1 was held to be having valid and effective driving licence at the time of accident. Insurance Company/respondent No.3 was held responsible to indemnify the insurer.

[4]. The Tribunal disbelieved the monthly income of the deceased as projected by the claimants for want of evidence. The monthly income of the deceased was held to be Rs.4200/- per month on the basis of being unskilled labourer. Keeping in view the family composition, 1/5th deduction was applied towards personal expenses of the deceased. The age of the deceased was found to be 60 years as per post mortem report and, therefore, multiplier of 9 was applied to assess dependency of the family. The Tribunal after granting an amount of Rs.20,000/- towards loss of consortium, awarded an amount

of Rs.3,82,880/- as compensation to the appellants/claimants.

[5]. Feeling aggrieved with the aforesaid award, the appellants have preferred this appeal on two counts. Firstly, keeping in view the age of the deceased, the Tribunal has not adverted to future prospects of the deceased in terms of future earnings. Secondly, in view of ratio of ***National Insurance Co. Limited vs. Pranay Sethi, 2017 SCC 1270,*** an amount of Rs.70,000/- should have been awarded under the conventional heads.

[6]. Learned counsel for respondent No.3/Insurance Company submitted that the claimants are daughters and son and they have not mentioned their marital status at the time of filing of claim petition, therefore, deduction to the tune of 1/5th ought not to have been applied by the Tribunal.

[7]. I have considered the aforesaid submission. Firstly, the cross-appeal has not been filed by the Insurance Company. Secondly no such evidence has been led by respondent No.3/Insurance Company, proving that the claimants were not depending upon the income of the deceased. No such consideration can be made in respect of aforesaid plea in the appeal filed by claimants, thus contention of learned counsel for the respondent No.3-Insurance Company is hereby rejected.

[8]. The monthly income of the deceased was assessed to be Rs.4200/ by the Tribunal on the basis of being unskilled labourer. He was found to be 60 years of age as per *post mortem* report, therefore, increase on account of future prospects to the tune of 10% in view of ***National Insurance Co. Limited vs. Pranay Sethi's*** case (supra) is to be added to the monthly income of the deceased. In this way the income of the deceased would come out to be Rs.4620/- per month and after applying 1/5th deduction towards personal expenses, the monthly dependency would come out to be Rs.3696/-.

[9]. The deceased was aged about 60 years at the time of accident. In view of ratio laid down in ***Sarla Verma vs. Delhi Transportation Corporation, 2009 ACJ 1298 (SC)*** on the basis of age of the deceased, multiplier of 9 is to be applied. In this way assessment towards dependency comes out to be Rs.3,99,168/- (3696 x 12 x 9). An Additional amount of Rs.70,000/- can be assessed towards loss of estate, loss of consortium and funeral expenses in view of ***National Insurance Co. Limited vs. Pranay Sethi,'s*** case (supra). In this way, total amount of compensation comes out to be Rs.4,69,168/- (3,99,168 + 70,000).

[10]. The enhanced amount i.e. Rs.86,288/- (4,69,168 – 3,82,880) would carry interest @ 7.5% per annum from the date

of filing of the claim petition till final realization of the amount. Liability to pay the enhanced amount shall remain same as ordered by the Tribunal.

[11]. In view of aforesaid modification, the appeal is accordingly disposed of.

October 19, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

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