

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 854 of 2014

Date of Decision: 07.03.2019

Shiv Kumar and others

.....Appellants

Versus

Gainda Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajneesh Chadwal, Advocate
for the appellants.

Mr. Ashwani Talwar and Mr. Lalit Kumar, Advocates
for Insurance Company-respondent No.3.

AVNEESH JHINGAN, J.(oral)

The present appeal is against award dated 6.11.2013 passed by the Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal').

The appellants are husband, minor son and mother-in-law of Jyoti Yadav (deceased). Respondent No.1 is the driver of truck bearing registration No.RJ-06GA-2477 (for short 'the offending vehicle') and respondents No. 2 & 3 are the owner and insurer (i.e. Reliance General Insurance Company Limited) of the offending vehicle.

The facts in brief are that on 19.12.2012, Jyoti Yadav, aged 25 years alongwith her husband was going to Alwar. When they reached near Harsh Service Station, they were struck by the offending vehicle. As a result of the impact, Jyoti Yadav sustained grievous injuries. She was treated in various hospitals and ultimately succumbed to the injuries on 22.1.2013. FIR No. 666

dated 24.12.2012 was registered at Police Station Behror. She was four months pregnant at the time of accident.

In the claim petition filed, it was pleaded that the deceased was B.Sc, B.Ed and M.Sc and was expecting to have a job in near future and in the meanwhile she was imparting tuition to the students and doing work of knitting and sewing. It was claimed that her earning was ₹ 15,000/- per month. The claimants failed to prove the occupation and earning of the deceased. The Tribunal equated her with a labourer and assessed the monthly income as ₹ 1500/- and applied multiplier of 18. A total sum of ₹ 19,12,200/- was awarded as compensation along with interest at the rate of 7.5% per annum. The amount awarded included ₹ 15,18,000/- for medical expenses. ₹ 20,000/- was awarded under conventional heads.

The Tribunal after considering the facts and on appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

Heard learned counsel for the parties.

Learned counsel for the appellants contends that the deceased was well qualified and the Tribunal erred in equating her with an unskilled labourer and the income assessed is even less than the minimum wages prevalent in the State at the time of accident. The grievance raised is that the amounts awarded for conventional heads are on lower side.

Learned counsel for the insurer contends that the claimants were husbands, minor child and mother-in-law of deceased, it was not proved that the husband was dependant upon the earning of the deceased.

There is no serious dispute about the fact that the deceased was well qualified, albeit, the claimants failed to prove the occupation and earning of the deceased. In such circumstances, it would not be appropriate to equate her with an unskilled labourer. The contention raised by learned counsel for the insurer that the husband was not dependant on the earning of the deceased cannot be accepted. Even if the deceased is considered to be a house maker, her contribution towards the family and her matrimonial duties cannot be under estimated, rather, it would be very difficult to compensate for her role as a house-maker, as a house-wife, as a mother and as a daughter-in-law, in monetary terms.

Reliance is placed upon the decision of the Supreme Court in ***Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others***, 2015 (4) SCC 237, in which it has been held as under:

"Even assuming Jayvantiben Jitendra Trivedi was not self employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a housemother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A housewife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

Considering the qualification and having clue from the minimum wages prevalent in the State at the time of accident, the notional income of the deceased is assessed as ₹ 6000/- per month. As notional income has been assessed, no deduction is being made for self-expenses.

Reliance in this regard is placed upon the decision of this Court in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others***,

2013(4) PLR 328, in which it has been held as under:

"15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra),as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

There is no dispute with regard to multiplier of 18 applied by the Tribunal. In consonance with the decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157**, the claimants are entitled to ₹ 15,000/- each for loss of estate and for funeral expenses. ₹ 40,000/- are also awarded for loss of consortium to the widow.

In view of the above discussion, the compensation is recalculated as under:

Sr.No.	Particulars	Amount Awarded
1.	Monthly income	₹ 6000/-
2.	Multiplier of 18	₹ 12,96,000/-
3.	Conventional heads	₹ 70,000/-
4.	Medical expenses as already awarded by Tribunal	₹ 15,18,000/-
5.	₹ 50,000/- as awarded by the Tribunal for fetus	₹ 50,000/-
6.	Total	₹ 29,34,000/-

The award dated 6.11.2013 is modified to the extent that amount awarded of ₹ 19,12,000/- by the Tribunal is enhanced to ₹ 29,34,000/-.

The claimants shall be entitled to enhanced amount alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

07.03.2019

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Whether speaking/reasoned	Yes
Whether Reportable:	Yes