IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.9178 of 2014
Date of Decision: 17.01.2019

Kela Devi and others

...Appellants

Versus

Mahipal and another

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Ashwani Arora, Advocate for the appellants.

Mr. Aman Dhir, Advocate for respondent No.2.

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B.S.WALIA, J (Oral).

1. Appeal has been filed by the widow, three children besides mother of Ramesh Kumar, who met with a motor vehicular accident on 16.12.2012 and died thereafter on 24.12.2012 on account of injuries sustained in the accident.

2. On the basis of the evidence led before it, the learned Motor Accidents Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal'), took into account occupation of the deceased as unskilled labourer and assessed his income as ₹6,000/- per month, made deduction of 1/3rd of the income of the deceased towards his personal expenses, applied multiplier of '11' and thereafter by awarding ₹1 Lakh on account of loss of consortium, ₹25,000/- on account of loss of love and affection, ₹25,000/-

towards funeral expenses, ₹180,000/- on account of treatment charges incurred, awarded total compensation of ₹8,58,000/-.

3. Learned counsel for the appellants contended that the appeal was liable to be allowed, award modified and compensation payable enhanced on the ground that despite entitlement no amount had been awarded on account of future prospects besides in view of the decision of Hon'ble the Supreme Court in N. Sivammal vs. Managing Director, Pandian Roadways Corporation, 1985 (1) SCC 18, the appellants were entitled to award of compensation on account of having suffered mental agony as family members of the deceased during the period the deceased hovered between life and death. Learned counsel further contended that deduction made @ 1/3rd of the income of the deceased towards his personal expenses was wrongly made, whereas in view of four dependants of the deceased, deduction ought to have been made @ 1/4th of the income of the deceased, in view of paragraph No.30 of the decision of Hon'ble the Supreme Court in Sarla Verma Vs. Delhi Transport Co-op. and another, 2009 (3) RCR (Civil) 77. Learned counsel further contended that ₹1 Lakh awarded on account of loss of consortium was liable to be sustained in view of the decision of Hon'ble the Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 2009, Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhru Ram and Vimla Devi and others vs. National Insurance Company Ltd. and others, Civil Appeal No.11042 of 2018, arising out of SLP (C) No.17321 of 2016, besides a sum of ₹15,000/- was liable to be awarded on account of loss of estate.

4. Per contra, learned counsel for the respondent-Insurance Company contended that ₹25,000/- awarded on account of loss of love and affection was not payable besides ₹25,000/- awarded on account of funeral expenses was liable to be scaled down to ₹15,000/-/

5. I have considered the submissions of learned counsel for the parties.

6. Admittedly the deceased was 52 years of age, was treated as unskilled labourer and his income was assessed at ₹6,000/- per month by the Tribunal. As per paragraph No.30 of the decision in Sarla Verma's case (supra), since deceased left behind four dependants, deduction is to be made @ 1/4th of the income of the deceased as against 1/3rd ordered by the Tribunal.

7. As per paragraph No.61 (iv) of the decision in Pranay Sethi's case (supra), where the deceased was between the age of 50 to 60 years, 10% of the established income of the deceased less tax component is to be added to the income on account of future prospects while computing compensation.

Since in the instant case deceased was self employed and was 52 years of age, therefore, 10% of the established income of the deceased minus tax component is liable to be added to the income on account of future prospects while computing compensation.

8. As regards appropriate compensation under conventional heads, as per paragraph No.61 (viii) of the decision in Pranay Sethi's case

(supra), compensation of ₹15,000/-, ₹40,000/- and ₹15,000/- respectively is to be awarded on account of loss of estate, loss of consortium and funeral expenses respectively.

9. After taking into account the decision rendered in Pranay Sethi's case (supra), Hon'ble the Supreme Court in a subsequent decision in Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhru Ram, 2018 (4) RCR (Civil) 333, held that each of the children of the deceased are entitled to ₹40,000/- on account of loss of parental consortium.

10. However, as per latest judgment of Hon'ble the Supreme Court in 'Vimla Devi and others vs. National Insurance Company Ltd. and others, 2019 RCR (Civil) 80, Hon'ble the Supreme Court apart from awarding ₹15,000/- towards funeral expenses and ₹15,000/- towards loss of estate, awarded ₹1 Lakh on account of loss of spousal and parental consortium in a case involving a widow and two minor children.

11. Accordingly, the appellants are held entitled to award of ₹15,000/- on account of loss of estate, ₹15,000/- on account of funeral expenses as against ₹25,000/- awarded by the Tribunal besides consolidated amount of Rs.1 Lakh to appellant No.1-wife and appellant Nos.2 to 4/children on account of loss of spousal/parental consortium.

12. In N. Sivammal's case (supra), Hon'ble the Supreme Court after taking into account the fact that the deceased suffered pain on account of injuries sustained in the accident for a period of 19 days before his death, awarded Rs.5,000/- under the head of mental agony suffered by the claimants as a result of the death of the deceased. In the circumstances, I am of the view that some amount is payable on account of pain and

suffering of the deceased as also mental agony suffered by the claimants. Accordingly a token amount of ₹10,000/- is awarded on said count in the light of the decision of N. Sivammal's case (supra).

13. In the circumstances, the appellants/claimants are held entitled to the following compensation:-

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
1	Income	₹6000/-	₹6000/-
2	Future Prospects	Nil	₹600/- i.e. 10% of ₹6000/-
3	Total Income assessed	₹6000/-	(₹6000+ ₹600) = ₹6600/-
4	Multiplier applied	11	11
5	Deduction (towards personal expenses of the deceased)	1/3rd ₹6000-₹2000=₹4000/-	1/4th ₹6600-₹1650=₹4950/-
6	Annual dependency	₹4000x12x11=₹5,28,000/-	₹4950x12x11=₹6,53,400/-
7.	Funeral expenses	₹25,000/-	₹15,000/-
8.	Loss of Estate	Nil.	₹15,000/-
9.	Loss of consortium and love and affection	₹1,00,000/- (to the widow of the deceased)	₹40,000/- to the widow and ₹40,000/- each to all the three children i.e. ₹1,60,000/-. However, the same is kept at ₹1,00,000/- in view of decision Vimla Devi's case (supra)
10.	Loss of care and guidance for minor children	₹25,000/-	Nil.
11.	Treatment Charges	₹1,80,000/-	₹1,80,000/-
12.	Compensation on account of pain and suffering of the deceased as also mental agony to the appellants	Nil.	₹10,000/-
	Total	₹8,58,000/-	₹9,73,400/-

14. Accordingly, as against the compensation of ₹8,58,000/- awarded by the Tribunal, the appellants are held entitled to award of compensation of ₹9,73,400/- 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.

15. Needless to mention, the appellants would be entitled to the award of compensation after first making payment of ₹1,00,000/- towards loss of spousal/parental consortium to the wife and children of the deceased respectively. The Insurance Company shall make payment of compensation to the appellants after making deduction of tax liability, if any, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

16. Accordingly, appeal is allowed and award dated 01.04.2014, passed by the learned Tribunal is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

17.01.2019
rajesh.k.khurana

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