IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 12.07.2019

FAO No. 1506 of 2017 (O&M)

Nirmala Devi and others ....*Appellants*

Versus

Ravi and another ....*Respondents*

FAO No. 1507 of 2017 (O&M)

Bijender Singh ....*Appellant*

Versus

Ravi and another ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sandeep Verma, Advocate
for the appellants

Mr. B K Bagri, Advocate
for respondent No. 1

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same accident that took place on 17.06.2015 wherein Ashok Kumar died and Bijender Singh sustained injuries.

FAO No. 1506 of 2017 has been filed by Nirmala Devi and others seeking enhancement of compensation whereas other appeal has been preferred by Bijender Singh for the same relief.

CM 5053 CII of 2017 in FAO 1506 of 2017

Prayer in this application is for condoning delay of 65 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 65 days in filing the appeal stands condoned.

FAO 1506 of 2017

The Tribunal awarded Rs.6,64,000/-, detailed hereunder:-

-Monthly income of the deceased	Rs.6,000/-
-Deduction for personal expenses	1/3rd
-Multiplier	13
-Loss of dependency	Rs.6,24,000/-
-Transportation, funeral, last rites expenses	Rs.20,000/-
-Loss of consortium	Rs.20,000/-

The plea of claimants is that the deceased was working on a brick kiln (bhatha) and also running milk dairy thereby earning Rs.1/1.25 lacs per month. They examined Ram Darshan (PW1) to prove employment of deceased at Brick kiln and the witness produced extract of register regarding income and advance money given to Ashok Kumar Ex. P1 and Ex.P2. As per aforesaid extract, Ashok Kumar earned Rs.2,83,851/- from 23.03.2014 to 28.04.2014 and Rs.2,31,497/- from 30.04.2014 to 06.06.2014. The Tribunal, in para 11 of the award, has noticed the facts elicited in cross examination of said Ram Darshan to the effect that documents Ex.P1 to P3 do not contain any seal and name of his Brick Kiln though the same contained grid number of Bhatta (brick kiln). The document Ex.P1 and Ex.P2 do not contain either his signatures or of Ashok Kumar. He did not produce any sales certificate or income tax record of Brick kiln. The register does not contain page marking which are stated to be rough records of the Bhatha. Taking into consideration the facts elicited in cross examination of the witness, the Tribunal has rightly refused to rely upon testimony of Ram Darshan for assessing income of deceased. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased assessed by the Tribunal is correct and affirmed. The claimants shall be entitle to addition in income for future prospects @ 25%. Multiplier applied by the Tribunal is correct and affirmed.

The application for compensation has been filed by the widow, and three sons of the deceased. There is nothing on record suggestive of the fact that any of sons of the deceased was not dependent upon his earning. In the given circumstances, admissible deduction for personal expenses would be 1/4th. As such, loss of dependency comes to Rs.8,77,500/- (Rs.9,36,000 i.e. 6,000 x 12 x 13 + Rs.2,34,000 (25% addition) – Rs.2,92,500/- (1/4th deduction)).

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

Total compensation is Rs.9,47,500/- and additional amount is Rs.2,83,500/- (9,47,500-6,64,000), payable with interest @ 7.5% per annum from the date of petition till realization to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

FAO No. 1507 of 2017

The Tribunal awarded Rs.73,000/- detailed hereunder:-

-Medical expenses	Rs.50,000/-
-Pain and sufferings	Rs.10,000/-
-Nutritious diet	Rs.4,000/-
-Attendant charges	Rs.4000/-
-Transportation charges	Rs.5,000/-

The injured sustained fracture right humerous. He remained hospitalized in Dr. Amandeep Hospital and Trauma Centre, Rewari from 19.06.2015 to 21.06.2015. In the given circumstances, compensation awarded by the Tribunal under various heads i.e. pain and sufferings, nutritious diet, attendant charges and transportation charges warrant no addition. However, the claimant is awarded Rs.10,000/- for loss of income during period of treatment and recovery. The additional amount of Rs.10,000/- shall carry interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

12.07.2019
Mohan Bimbra

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