IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 748 of 2016

Date of Decision: May 07 , 2019.

Santosh and others ...... APPELLANT (s)

Versus

Sunil Kumar and another ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vivek Khatri, Advocate
for the appellants.

Mr. D.P.Gupta, Advocate
for respondent No.2 – Insurance company

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Hisar (for short, the 'Tribunal') vide impugned award dated 01.10.2015 on account of death of Gulab in a motor vehicle accident.

Brief facts necessary for the adjudication of the case are that, the claimants i.e., the parents and brother of the deceased-Gulab, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Gulab, who lost his life in a motor vehicle accident which took place on 11.12.2014. FIR No.519 dated 11.12.2014 under Sections 279/337/304A IPC, Police Station Sadar Rohtak was registered in respect to the incident. Deceased-Gulab, who was aged 19 years at the time of the accident, is claimed to be a student of Bachelor of Commerce (IInd Year) and working at the shop of his father as well, earning a sum of ₹10,000/- per month. Compensation of ₹50,00,000/- was prayed for.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of Sonalika tractor bearing registration No. HR-12Y-4499 by respondent No.1-Sunil Kumar. This finding of the learned Tribunal has attained finality.

Learned Tribunal while assessing income of deceased-Gulab, to be ₹7,500/- per month, awarded a total sum of ₹8,25,000/-. Deduction to the extent of 50% was effected. Multiplier of 15 was applied. ₹1,00,000/- was awarded to the parents of the deceased on account of loss of love and affection, besides, ₹25,000/- towards funeral expenses and transportation and ₹25,000/- as litigation charges. Aggrieved therefrom, present appeal has been preferred.

Learned counsel for the appellants while not impugning income of the deceased as assessed by the learned Tribunal to be ₹7,500/- per month, submits that increment on account of future prospects be awarded. It is further submitted that multiplier of 15 has been wrongly applied as the deceased was 19 years old at the relevant time. It is however submitted that the claimants have no objection in case compensation under the conventional heads is reworked in view of the judgments of the Hon'ble Supreme Court in **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 total amount of compensation awarded to the appellants be enhanced accordingly.

Learned counsel for respondent No.2-Insurance company refutes the abovesaid averments and submits that the learned Tribunal has assessed income of the deceased at much higher rate. Excessive compensation has been awarded under the conventional heads. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the file.

There is no dispute regarding death of Gulab in a motor vehicle accident which took place on 11.12.2014 due to the rash and negligent driving of the offending tractor bearing registration No.HR-12Y-4499 by respondent No.1-Sunil Kumar. Neither is there a dispute regarding liability of the Insurance company.

Deceased-Gulab was admittedly 19 years old at the time of the accident, pursuing Bachelor of Commerce in 2nd Year. He would necessarily have been able to earn completing his studies after a while. I do not find any ground for reducing the income as assessed on the asking of learned counsel for the respondent-Insurance company, in this appeal preferred by the claimants in the facts and circumstances of the case. Income of the deceased as assessed by the learned Tribunal is, thus, upheld.

Claimants are entitled to addition in income at the rate of 40% on account of future prospects in terms of the judgment of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Deduction to the extent of 50% towards personal expenses has been correctly effected. However, the learned Tribunal has erred in not applying an appropriate multiplier. The Hon'ble Supreme Court in **Munna Lal Jain v. Vipin Kumar Sharma, (*2015) 6 SCC 347*** has specifically held that multiplier is to be applied with reference to the age of the deceased. Deceased was admittedly 19 years old at the time of the accident. Hence, multiplier of 18 instead of 15, is required to be applied.

Instead of ₹1,00,000/- on account of loss of love and affection awarded to the parents of the deceased, they are held entitled to ₹40,000/- on account of loss of filial consortium in terms of the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. (supra) as well as decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others). Instead of ₹25,000/- awarded towards transportation and funeral expenses, the claimants are entitled to ₹15,000/- each on account of funeral expenses and loss of estate, respectively.

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

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	7,500 p.m. i.e. ₹90,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	90,000 + (90,000 **x** 40%) = 1,26,000
3.	Net income after 50% deduction on account of personal expenses	1,26,000 – (1,26,000 **x** 1/2) = 63,000
4.	Total dependancy after applying a multiplier of 18	(63,000 **x** 18) = 11,34,000
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of filial consortium	40,000
	Grand Total	₹12,04,000/-

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 on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Manner of disbursement as well as ratio of apportionment as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

May 07 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No