IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

236 FAO-1914-2017 (O&M)

Date of decision: 04.10.2019

DINESH KUMAR ... Appellant

Versus

BALAK RAM & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Navmohit Singh, Advocate for the appellant.
Mr. Pardeep Kumar, Advocate for the insurance company.

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REKHA MITTAL, J. (Oral)

Heard.

Counsel for the appellant would inform that right of recovery given in favour of the insurance company has been set aside by this Court vide order dated 22.03.2018 passed in FAO No.2914 of 2016.

Notice in the applications for condonation of delay as well as in appeal to the insurance company only.

Mr. Pardeep Kumar, Advocate accepts notice on behalf of the insurance company.

CM No.6284-CII of 2017

Prayer in this application is for condonation of delay of 242 days in refiling the appeal.

In view of averments made in the application supported by an affidavit of counsel for the appellant coupled with that provisions of the Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, application is allowed and delay of 242 days in refiling the appeal is condoned subject to the condition that the claimant shall forgo interest for the period of delay, in case compensation is enhanced.

CM No.6285-CII of 2017

Heard.

Allowed as prayed for. Delay of 43 days in filing the appeal stands condoned.

Main Case

The claimant is in appeal seeking enhancement of compensation on account of death of Ramti Devi in a motor vehicular accident that took place on 09.02.2014.

The Tribunal awarded Rs.4,11,000/-, detailed hereunder:-

Monthly value of services of the deceased	Rs.6000/-
Multiplier	7
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.3,36,000/-
Expenses on funeral	Rs.25,000/-
Loss of love and affection	Rs.50,000/-

Counsel for the appellant would argue that as the deceased is treated to be a house-maker for the purpose of computing monthly loss of dependency, no deduction for personal expenses should be allowed. It is further argued that as per identity card issued by Unique Identification Authority of India, deceased was 57 years old but the Tribunal has assessed her age to be 63 years by averaging her age mentioned in the aforesaid document Ex.P7 and postmortem report Ex.P5.

Counsel representing the insurance company, on the contrary, would argue that compensation allowed under conventional heads may be modified. It is further submitted that the Tribunal has rightly assessed age of the deceased more than 60 years.

The occurrence in question took place in February, 2014. The claim has been preferred by married son of the deceased, aged about 42 years. As per claim preferred in August, 2014, the claimant has mentioned his age at 42 years. If we accept contention of the claimant that his mother was 57 years old in February, 2014, it means that deceased was 15 years old when she delivered claimant Dinesh Kumar. This fact alone is sufficient to falsify and belie plea of the claimant that deceased was 57 years old, as recorded in identity card issued by Unique Identification Authority of India. Counsel for the appellant has failed to apprise the basis on which age of the deceased was mentioned in Ex.P7. Keeping in view the above, it is difficult to accept contention of the appellant that age of the deceased is liable to be assessed less than 60 years.

Taking a clue from notification issued by the State of Haryana fixing minimum wage coupled with that a house-maker has multifarious duties to perform, value of services of the deceased assessed by the Tribunal is affirmed. As has been rightly argued by counsel for the appellant, no deduction for personal expenses would be made, in the light of Division Bench judgment of this Court **Paramjit Singh and another Vs. Dilbagh Singh @ Bagga and others, 2013(3) Law Herald 2730**. In this manner, loss of dependency is calculated at Rs.5,04,000/- (6000 x 12 x 7).

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimant shall be entitle to Rs.15,000/- for funeral expenses/last rites.

Total compensation is Rs.5,19,000/- and additional amount is Rs.1,08,000/- (5,19,000 - 4,11,000), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 242 days in refiling the appeal.

The appeal is partly allowed in the aforesaid terms.

(REKHA MITTAL)
JUDGE

04.10.2019
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