IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.7987 of 2016(O&M)
Date of Decision: 13.08.2019

Rajender Singh and another

......Appellants.

Versus

Suresh Kumar and others

...... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: None for the appellants.

None for respondent no.3.

*****

LISA GILL, J.

CM-26807-CII of 2016.

Prayer in this application is for condonation of delay in filing of this appeal. No reply thereto has been filed.

For the reasons mentioned in the application, duly supported by an affidavit of appellant-claimant no.1, delay of 101 days in filing of this appeal is condoned as it is considered just and expedient to decide this claimants' appeal on merits rather than dismiss it on technical considerations in the given circumstances.

Application is accordingly allowed.

FAO No. 7987 of 2016.

There is no representation on behalf of the parties. However, as the present, is an appeal filed by the claimants (parents of the deceased), I do not find any ground to defer the decision on this matter. Notice in the application for condonation of delay besides notice of motion in the appeal was issued to respondent no.3-Insurance Company, only on 15.02.2018 and duly accepted by the counsel representing respondent no.3.

Appellant-claimants, seek enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Hisar (for short 'tribunal'), vide impugned award dated 03.02.2016, on account of death of Sunder.

Petition under Section 166 of the Motor Vehicles Act, (for short 'Act') was filed by the appellants-claimants seeking compensation on account of death of their son-Sunder in a motor vehicle accident, which took place on 08.03.2014, due to the rash and negligent driving of the offending vehicle by its driver-respondent no.1. The deceased was claimed to be 22 years old, truck driver at the time of the accident, earning a sum of ₹15,000/- per month being employed with Jai Laxmi Transport Company.

Learned Tribunal concluded that the deceased-Sunder died in the motor vehicle accident due to the rash and negligent act of the driver (respondent no.1-Suresh) of the offending vehicle, inasmuch as leaving the said vehicle negligently stationed on the road without any indication of its presence.

Learned tribunal while accepting the deceased-Sunder to be 26 years old at the time of the accident, assessed his income to be ₹9000/- per month and awarded a sum of ₹09,06,000/-, which is detailed as under:-

1.	Total income of deceased	₹9000/- p.m.
2.	Deduction of 50% on account of personal expenses	₹9000/- (₹9000/-*1/2 = ₹4500/-) i.e. ₹4500/-

3.	Annual Dependency after applying multiplier of 14	₹4500 x 12 x 14= = ₹7,56,000/-
4.	Loss of love and affection	₹1,00,000/-
5.	Transportation and funeral expenses	₹25,000/-
6.	Litigation expenses	₹25,000/-
	Total Compensation =	**₹09,06,000/-**

I have perused the file as well as the record which was requisitioned.

A perusal of the grounds of appeal reveals that the appellant is accepted to be 26 years old at the time of the accident. Therefore, this finding of the learned tribunal, is upheld. Prayer is for addition of an increment on account of future prospects. It is further pleaded that deduction of 50% has been wrongly effected. Enhancement of the compensation is sought.

Learned tribunal has not accepted income of the deceased to be ₹15,000/- as pleaded while observing that the exact income of the deceased was not proved on record. Claimants examined PW-5-Ravi Kant, Proprietor of Jai Luxmi Transport Company, Tosham Chungi, Hansi, District Hisar, to prove his employment with the aforesaid firm and receipt of ₹15,000/- per month as salary by the deceased. Perusal of the testimony of PW-5 reveals that he has conceeded, that in the income tax return filed by him for the assessment year 2014-15, admittedly after the accident. There is no mention of the payment of salary of ₹15,000/- to the deceased. There is indeed no concrete evidence on record to indicate the exact income of the deceased. It is to be noticed that minimum wage available to a truck driver in the State of

Haryana at the relevant time i.e., 08.03.2014, was not more than ₹9000/- per month. Therefore, income of the deceased as assessed by the learned tribunal to be ₹9000/-, is maintained.

However, in terms of the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009,** future prospects at the rate of 40% are afforded. Deduction of ½/50% is correctly applied by the learned tribunal. However, learned Tribunal has erred in applying a multiplier of 14 with reference to the age of the parents. The matter regarding application of multiplier while assessing the compensation is no longer res integra. It has been held by the Hon'ble Supreme Court in **Munna Lal Jain Vs. Vipin Kumar Sharma, (2015) 6 SCC 347** that the multiplier is to be applied as per the age of the deceased. Therefore, multiplier of 17 has to be applied as the deceased was admittedly 26 years old. Loss of dependency is thus calculated as ₹12,85,200/- (₹6300/- x 12 x 17)

Instead of a sum of ₹25,000/- awarded towards loss of transportation and funeral expenses, the claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate. The claimants are not entitled to ₹1,00,000/- awarded towards loss of love and affection. They are however entitled to ₹40,000/- on account of loss of filial consortium in terms of the judgement of Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333**, as well as **decision dated 14.03.2019 of this Court in FAO No.2110 of 2018, titled Shri Ram General Insurance Co. Ltd. Vs. Beant Kaur and others**. A sum of ₹25,000/- awarded towards lost of litigation, is maintained.

Compensation towards the claimants on account of death of Sunder, is thus re-worked as under:-

1.	Total income of deceased	₹9000/- p.m.
2.	Total income after additional of future prospects at the rate of 40%	₹9000/- (₹9000/-+₹3600/-) i.e. ₹12,600/-
3.	Deduction of 1/2 on account of personal expenses	₹12,600/- (₹12,600*1/2=₹6300/-) = ₹6300/-
4.	Annual dependency after applying multiplier of 17	₹6300/- x 12 x 17= ₹12,85,200/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Loss of filial consortium	₹40,000/-
8.	Cost of litigation	₹25,000/-
	Total Compensation =	**₹13,80,200/-**

As appellant no.1 had died on 28.02.2018 (death certificate is on record), appellant no.2 is entitled to the entire amount of compensation. Claimant-appellant no.2 shall be entitled to interest on the enhanced compensation amount at the rate of 7.5% per annum from the date of filing of petition till realization. Needless to say that the amount, if any, already disbursed to the claimants shall stand deducted.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

[LISA GILL]
Judge

13.08.2019
s.khan

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