IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 3151 of 2017

Date of Decision: November 05 , 2019.

Kiran and others ...... APPELLANT (s)

Versus

Rajesh Kumar and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashish Gupta, Advocate
for the appellants.

None for respondents No.1 and 2.

None for respondent No.3 – Insurance company

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LISA GILL, J.

None had appeared on behalf of respondent No.3-Insurance company, despite service on the earlier occasion. Today again, there is no representation on behalf of the Insurance company. I do not find any justifiable reason to defer the hearing of this case for this reason.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Gurgaon (for short, the 'Tribunal') vide impugned award dated 12.05.2016 on account of death of Vijay Singh in a motor vehicle accident.

Brief facts necessary for the adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Vijay Singh, who lost his life in a motor vehicle accident which took place on 19.03.2015. FIR No.121 dated 20.03.2015 under Sections 279/304A IPC, Police Station Pataudi was registered against respondent No.1-driver in respect to the incident. Deceased-Vijay Singh, aged 32 years, is claimed to be a driver by profession, earning a sum of ₹25,000/- per month. Compensation was thus prayed for.

Learned Tribunal on considering the facts and evidence on record concluded that Vijay Singh died on account of the injuries received by him in the motor vehicle accident, in question, which took place due to the rash and negligent driving of motorcycle bearing registration No.HR-76A-2595 by respondent No.1-Rajesh Kumar. Learned Tribunal, while assessing income of the deceased as ₹8,032/- per month, awarded a total amount of ₹11,52,584/- to the claimants. Deduction to the extent of 1/3rd was effected. Multiplier of 16 was applied. ₹25,000/- was awarded on account of funeral expenses, besides, ₹1,00,000/- to the claimant-widow towards loss of consortium.

Learned counsel for the appellants argues that income of the deceased has been wrongly assessed, whereas he was in receipt of ₹21,428/- per month as indicated in the account statement. Reference is made to the statement of PW2 Parmod Yadav, the Record Keeper of M/s Orix Auto Infra Services Ltd. It is further submitted that increment on account of future prospects should be afforded. Compensation under the conventional heads, it is stated, be reworked in terms 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 amount of compensation awarded to the appellants be enhanced accordingly.

I have heard learned counsel for the appellants and have gone through the record with his assistance.

There is no dispute regarding death of Vijay Singh in a motor vehicle accident which took place on 19.03.2015 due to the rash and negligent driving of the offending vehicle bearing registration No.HR-76A-2595 by respondent No.1-Rajesh Kumar. Finding of the learned Tribunal in this regard has attained finality.

It is a matter of record that the deceased was 32 years old at the time of the accident and a driver by profession, working with M/s Orix Auto Infra Service Ltd. Perusal of the record reveals that as per salary slips (Ex.P5 to P8), duly proved by PW2 Parmod Kumar, the deceased was in receipt of ₹8,893/- per month. It is rightly observed by the learned Tribunal that the pay-slips do not tally with the entries reflected in the account statement. Learned Tribunal has assessed income of the deceased as ₹8,032/- per month, by deducting a sum of ₹861/-, which was deposited by the deceased towards PF, ESI etc. The said deductions, needless to say, cannot be effected. Salary/income of the deceased is, thus, held to be ₹8,893/- per month in terms of the pay-slips (Ex.P5 to P8), which are duly proved on record.

As per the statement of PW2 Parmod Yadav, the deceased was employed on contract basis. He was not a permanent employee. Claimants are, therefore, entitled to increment at the rate of 40% on account of future prospects in terms of the judgment of the Hon'ble Supreme in Pranay Sethi (supra).

Deduction to the extent of 1/3rd has been correctly effected. Multiplier of 16 has been rightly applied as well. Instead of ₹25,000/- towards funeral expenses, a sum of ₹15,000/- is awarded, besides, another sum of ₹15,000/- towards loss of estate. Claimant-widow is held entitled to ₹40,000/- not ₹1,00,000/-, towards loss of consortium. Appellants No.2 and 3 are entitled to ₹40,000/- on account of loss of parental consortium and appellant No.4 is 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).

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

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	8,893 per month i.e., 1,06,716 per annum
2.	Total income after addition at the rate of 40% on account of future prospects	1,06,716 + (1,06,716 **x** 40%) = 1,49,402
3.	Deduction of 1/3rd on account of personal expenses	1,49,402 – (1,49,402 **x** 1/3) = 99,601
4.	Total dependancy after applying a multiplier of 16	(99,601 **x** 16) = 15,93,616
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium to appellant No.1	40,000
8.	Loss of parental consortium to appellants No.2 and 3	40,000
9.	Loss of filial consortium to appellant No.4	40,000
	Grand Total	₹17,43,616/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellants 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. Ratio of apportionment and manner of disbursement shall remain the same as determined by the learned Tribunal.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

November 05 , 2019.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No