IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1462 of 2018
Date of Decision: May 07, 2019

Smt. Kavita Devi and others

...... Appellants(s)

Versus

Dilbag Singh @ Baga and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Mohit Garg, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for respondent no.3-insurance company.

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LISA GILL, J. (oral)

This appeal has been filed seeking enhancement of the compensation awarded to the claimants vide award dated 08.11.2017, passed by learned Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal).

Appellants-claimants who are the widow, minor child and parents of the deceased Sudesh Kumar, filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Sudesh Kumar due to the injuries suffered by him in the motor vehicle accident, which took place on 29.10.2016. It is pleaded that the accident in question took place due to rash and negligent driving of the offending tractor bearing registration No. HR-22-L-3275, by its driver Dilbag Singh @ Baga-respondent no.1.

Learned Tribunal on considering the evidence on record concluded that the accident in question indeed took place on 29.10.2016 due to the rash and negligent driving of the offending tractor bearing registration No. HR-22-L-3275, by its driver Dilbag Singh @ Baga-respondent no.1. This finding of the learned Tribunal has attained finality. Learned Tribunal while assessing age of the deceased to be 30 years at the time of the accident concluded income of the deceased to be Rs.8,000/- per month and awarded a sum of Rs.17,83,600/- as compensation, which is detailed as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income	8,000/-
2.	Income after 40% increment on account of future prospects.	8000+40% = 11,200/-
3.	Income after deducting 1/4th as personal living expenses of the deceased	11,200 - 1/4th = 8,400/-
4.	Dependency after applying multiplier of 17	8,400 x 12 x 17 = 17,13,600/-
5.	Loss of estate to appellant no.1	15,000/-
6.	Loss of consortium to appellant no.1	40,000/-
7.	Funeral expenses	15,000/-
	Total	**17,83,600/-**

Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants argues that the learned Tribunal has incorrectly ignored the income-tax returns of the deceased for the assessment year 2014-2015 and 2015-2016 (Ex. P-25 and Ex. P-26) and has wrongly assessed income of the deceased to be Rs.8,000/- per month whereas he was earning much more. It is further submitted that while accepting the fact that it is a multiplier of 16 instead of 17, which should have been applied, the parents and child of the deceased are also entitled to loss of consortium (parental and filial). It is thus prayed that compensation be enhanced.

Learned counsel for the insurance company, however, refutes the above said averments and submits that just and reasonable compensation has already been afforded to the appellants. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Learned counsel for the respondent-insurance company is unable to deny that the income-tax returns Ex. P-25 and Ex. P-26 were filed much prior to the death of Sudesh Kumar in the motor vehicle accident, which took place on 29.10.2016. As per the income tax return Ex. P-26 for the year 2015-2016, income of the deceased is proved to be Rs.2,65,750/- per annum. It is further borne out from the record that the deceased was an educated person. He had a certificate of training in dairy farming as well as a certificate in the "Control of fish mortality, diseases and water insects alongwith harvesting and marketing". He was claimed to be providing his services for cultivating and managing the agricultural land of the family as well. Keeping in view the facts and circumstances, it is considered just and expedient to assess income of the deceased to be Rs. 2,65,750/- per annum. In terms of the judgment of the Hon'ble supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680,*** 40% increment has to be afforded on account of future prospects. Deduction of 1/4th was correctly applied. Multiplier of 16 instead of 17 is to be applied in this case. Amount of Rs.15,000/- each awarded on account of funeral expenses and loss of estate is maintained. Amount of Rs.40,000/- awarded to appellant no.1 towards loss of consortium is also maintained. However, appellant no.2 as well as parents of the deceased are entitled to Rs.40,000/- on account of loss of consortium (parental and filial). Reference in this regard can gainfully be made to the judgment of the 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-2011-2016, title ***Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others***.

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

Sr. No.	**Heads**	**Calculations**
1.	Income	2,65,750/- per annum
2.	Income after deducting 1/4th as personal living expenses	2,65,750 - 66,438 = 1,99,312/-

3.	Income after addition of 40% on account of future prospects	1,99,312+79,725 = 2,79,037/-
4.	Compensation after applying multiplier of 16	2,79,037 x 16 = 44,64,592/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of consortium to appellant no.1	40,000/-
8.	Loss of parental consortium to appellant no.2	40,000/-
9.	Loss of filial consortium to appellants no.3 & 4	40,000/-
	Total	**46,14,592/-**

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 at the rate of 7.5% per annum on the enhanced amount, from the date of filing of the claim petition till realization. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

May 07, 2019.
Sunil

(**LISA GILL**)
JUDGE

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