IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

255 FAO-4691-2017 (O&M)

Date of decision: 05.07.2019

KUNDAN LAL & ANR .. Appellants

Versus

SUBHASH CHANDER & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Jaswinder S. Grewal, Advocate for the appellants.
Mr. Abhimanyu Batra, Advocate for the insurance company.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Jatin Gilhotra in a motor vehicular accident that took place on 03.01.2015.

The Tribunal awarded Rs.5,57,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6000/-
2. Multiplier	18
3. Deduction for personal expenses	2/3rd
4. Loss of dependency	Rs.4,32,000/-
5. Expenses on funeral	Rs.25,000/-
6. Loss of love and affection	Rs.1,00,000/-

The Tribunal has assessed income of the deceased at Rs.6000/- per month. However, it has been noticed in para 14 of the award that deceased was pursuing his education and certificates of Matriculation and Senior Secondary were marked as exhibits. The Tribunal neither bothered to examine the minimum wage available at the relevant time nor put an effort to assess appropriate income on the basis of educational status of the deceased. The minimum wage of an unskilled worker at the relevant time was Rs.6660.10 per month. Taking a clue from notification issued by the State of Punjab fixing minimum wage coupled with educational background of the deceased, income of the deceased is assessed at Rs.7000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier applied by the Tribunal is correct and affirmed.

The application for compensation has been filed by unfortunate parents of deceased Jatin Gilhotra aged about 20 years. The Tribunal despite noticing that claim has been preferred by parents of the deceased has deducted 2/3rd towards personal and living expenses on the basis of presumption despite noticing judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77** referred to in para 15 of the award. All these facts go a long way to record that the Tribunal shirked from its responsibility to assess just and reasonable compensation. In view of enunciation laid down in **Sarla Verma & others's case (supra),** admissible deduction for personal and living expenses would be 50%. In this manner, loss of dependency is calculated at Rs.10,58,400/- [(7000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

Total compensation is Rs.10,88,400/- and the additional amount is Rs.5,31,400/- (10,88,400 - 5,57,000), payable with interest @ 7.5% per annum from the date of petition till realization, to mother of the deceased, to be invested in fixed deposit for a period of three years.

Before parting with this order, it is pertinent to note that the Tribunal in the concluding lines of the award has held that the insurance company shall be at liberty to claim the amount of compensation from the owner and driver of Trax Cruiser by filing separate suit. No reasons have been assigned by the Tribunal for giving this liberty to the insurance company particularly in the circumstances that the Tribunal has noticed that the insured is not guilty of violating the terms and conditions of insurance policy. All the aforesaid lead to conclusion that the Tribunal has disposed of the case in an arbitrary and whimsical manner and not by taking the legal principles and law into consideration.

A copy of the order be sent to the presiding officer of the Tribunal concerned at her present place of posting.

The appeal is partly allowed in the aforesaid terms.

05.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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