IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 5853 of 2017(O&M)

Date of Decision: August 22 , 2019.

Khushboo and others ...... APPELLANT (s)

Versus

Yogender Rana and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Akash Vashisth, Advocate for
Mr. Sanjay Vashisth, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for respondent No.3 – Insurance company

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LISA GILL, J.

This appeal has been filed by the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Rewari (for short, the 'Tribunal') vide impugned award dated 27.02.2017 on account of death of Nilesh in a motor vehicle accident.

Brief facts necessary for the adjudication of the case are that, the claimants, who are the widow, minor child (born posthumously) and mother of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Nilesh, who lost his life in a motor vehicle accident which took place on 07.02.2016. FIR No.18 dated 07.02.2016, under Sections 279/304A IPC, Police Station Sadar Rewari was registered against respondent No.1-driver in respect to the incident. It is pleaded that deceased-Nilesh, aged 28 years at the time of his death, was a businessman running an agency of M/s TATA Tele Services Ltd. under the name and style of M/s BKN Enterprises, earning a sum of ₹1,50,000/- per month. Compensation was thus prayed for.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of truck bearing registration No.HR-55W-4495 by respondent No.1-Yogender Rana.

Learned Tribunal while assessing income of the deceased to be ₹4,00,000/- per annum, awarded a total amount of ₹34,20,000/- to the claimants. Deduction to the extent of 50% was effected. Multiplier of 17 was applied. ₹20,000/- was awarded on account of transportation and funeral expenses.

Learned counsel for the appellants argues that the learned Tribunal has erred in assessing income of the deceased, while wrongly ignoring the income tax return of the deceased for the assessment year 2016-17 (Ex.P1A). Moreover, deduction of 50% has been incorrectly effected. No increment has been afforded towards future prospects. Moreover, meagre compensation is awarded under the conventional heads. It is thus prayed that the amount of compensation awarded to the appellants be enhanced accordingly.

Learned counsel for respondent No.3-Insurance company refutes the abovesaid averments and submits that just and reasonable compensation has been awarded by the learned Tribunal which does not call for any enhancement. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record.

There is no dispute regarding death of Nilesh in a motor vehicle accident which took place on 07.02.2016 due to the rash and negligent driving of the offending vehicle bearing registration No.HR-55W-4495 by respondent No.1-Yogender Rana. Finding of the learned Tribunal in this regard has attained finality.

Deceased-Nilesh is proved to have been running an agency of M/s TATA Tele Services Ltd. under the name and style of M/s BKN Enterprises. As per the income tax return for the assessment year 2015-2016 (Ex.P4), gross total income of the deceased-assessee was ₹3,75,380/-. As per the income tax return for the assessment year 2016-2017 (Ex.P1A), gross total income of the deceased-assessee was ₹7,45,495/-. This return for the assessment year 2016-2017 was admittedly filed on 03.10.2016 i.e., after the death of Nilesh. It is in this situation that learned Tribunal has chosen not to assess income of the deceased to be ₹7,45,495/- per annum, but as ₹4,00,000/- per annum. I do not find any ground, whatsoever, to interfere in this assessment which is just and reasonable in the given facts and circumstances of the case. This is so for the reason that income tax return for the assessment year 2016-2017 cannot be relied upon in its totality, to assess income of the deceased and neither is there any ground, whatsoever, to assess the deceased's income at a rate lower than ₹4,00,000/- per annum. There is no merit in the argument raised either by learned counsel for the appellants or the Insurance company in this regard. This finding of the learned Tribunal is, thus, upheld.

Claimants are entitled to increase in income on account of future prospects at the rate of 40% in terms of the judgment of the Hon'ble Supreme in **National Insurance Company Limited v. Pranay Sethi and others, *2017(16) SCC 680***. Keeping in view the number of dependants, deduction to the extent of 1/3rd and not 50%, has to be effected as per the judgment of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, ***2009(3) RCR (Civil) 77***. Multiplier of 17 has been rightly applied. Instead of ₹20,000/- towards transportation, last rites etc., ₹15,000/- each is awarded towards of loss of estate and funeral expenses. Appellant No.1 (widow), appellant No.2 (minor child) and appellant No.3 (mother of the deceased) are held entitled to ₹40,000/- each on account of loss of spousal, parental and filial consortium, respectively, in terms of 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 No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others).

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

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	4,00,000 per annum
2.	Total income after addition at the rate of 40% on account of future prospects	4,00,000 + (4,00,000 **x** 40%) = 5,60,000
3.	Deduction of 1/3rd on account of personal expenses	5,60,000 – (5,60,000 **x** 1/3) = 3,73,333
4.	Total dependancy after applying a multiplier of 17	(3,73,333 **x** 17) = 63,46,661
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 appellant No.2	40,000
9.	Loss of filial consortium to respondent No.3	40,000
	Grand Total	₹64,96,661/-

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 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

August 22 , 2019.
'om'

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