IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3914 of 2018 (O&M)
Date of Decision: December 05, 2019

Sumitra Rani and others

...Appellants

Versus

Jai Ram Chaudhary and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Yogesh Gupta, Advocate
for the appellants.

Mr. Vinod Chaudhri, Advocate
for respondent No.3-Insurance Company.

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JAISHREE THAKUR, J. (Oral)

1. This is an appeal that has been filed seeking to challenge the award dated 01.11.2017 passed by the Motor Accident Claims Tribunal, Chandigarh on the ground that inadequate compensation has been allowed.

2. In brief, the facts are that Sh. Om Parkash Rajpal aged 66 years died in an accident leaving behind Sumitra Rani, widow, Umesh Rajpal and Mukesh Rajpal, sons, Smt. Poonam Anand, married daughter. The accident took place on 23.01.2016 when the deceased along with his nephew Trishant Rajpal was crossing the road for taking the bus, when he was hit by a truck/trolla bearing registration No.RJ32-GA-7342, which was being driven by respondent No.1 at high speed, in a rash and negligent manner. The said truck/trolla struck against the deceased and rear tyre of the

conductor side of the offending vehicle run over the body and, therefore, he died at the spot. An FIR came to be registered at Police Station Zirakpur under Sections 279, 304-A of Indian Penal Code.

3. The legal heirs of the deceased filed a claim petition, which was contested by the driver and owner of the offending vehicle as well as the Insurance Company, respondent No.3. The Insurance Company raised the question of maintainability of the claim petition by contending that the driver of the offending vehicle was not holding a valid driving licence.

4. From the pleadings of the parties, issues were framed. Claimant No.1 Sumitra Rani stepped into the witness box as PW1, Ved Parkash Rajpal was examined as PW2 and Trishant Rajpal, eye-witness was examined as PW3 whereas, respondents No.1 and 2 namely the driver and owner of the offending vehicle placed on record copy of driving licence as Ex.R1, copy of RC as Ex.R2, copy of insurance policy as Ex.R3, copy of national permit as Ex.R4, copy of fitness certificate as Ex.R5 and copy of authorization certificate as Ex.R6. On the basis of the evidence led, the Tribunal came to hold that the offending vehicle was involved in the accident in question, which was being driven by respondent No.1. The Tribunal had taken the income of the deceased as ₹ 8450/- per month on the basis of minimum wages of unskilled labourer, as applicable at the time of the accident, and thus, had taken the annual income of the deceased as ₹ 1,01,400/- per annum. The Tribunal deducted ½ of the income of the deceased towards personal expenditure of the deceased, as the number of dependents left behind by the deceased was one i.e. claimant No.1-widow, thus, the annul income had been taken as ₹ 50,700/-. The Tribunal had

taken the age of the deceased as 68 years, and thus, applied the multiplier of 05 to the annual income of the deceased, which came to ₹ 2,53,000/-. Thereafter, a sum of ₹ 1 lac was awarded towards loss of consortium and an amount of ₹ 25,000/- was awarded on account of funeral expenses and thus, the total compensation awarded by the Tribunal came to ₹ 3,78,500/-.

5. Counsel appearing on behalf of the appellants would contend that inadequate compensation has been allowed by not taking the income of the deceased in its true perspective, while also contending that deduction at half of the income is not sustainable and it should be deducted at 1/3rd.

6. Per contra, counsel for respondent No.3-Insurance Company would contend that more than adequate compensation has already been allowed to the claimants, while contending that the married daughter and sons of the deceased, aged 41 years and above would certainly not be allowed any compensation, since they could not be held to be dependents. It is also argued that there is no evidence on the record that either of the three children were dependents on the deceased. It is further submitted that deduction of half of the income of the deceased towards personal expenditure has correctly been made. It is also argued that loss of consortium allowed at ₹ 1 lac is beyond the compensation allowed under the conventional heads as per the judgment rendered by the Constitutional Bench in ***National Insurance Company Ltd. vs. Pranay Sethi & Ors., 2017 (4) RCR (Civil) 1009.***

7. I have heard counsel for the parties and with their assistance, perused the pleadings of the case.

8. Admittedly, the factum of the accident is not in dispute, since

neither the Insurance Company nor the driver and owner have challenged the award of the Tribunal, therefore, it the only the question of compensation that needs to be reassessed. The deceased was aged 68 years and was working as a Document Writer and could be held to be a skilled worker. The minimum wages, as applicable in the Chandigarh for the year January 2016 on the date of the accident was not less than ₹ 9000/- per month and, therefore, the income of the deceased has to be taken as ₹ 1,08,000/- per annum. The deduction of half of the income of the deceased again is not sustainable and it should be 1/3rd since the deceased left behind a widow. This court is not inclined to agree that the major sons and the married daughter of the deceased are entitled to compensation in view of their age and in view of the fact that there is nothing on the record to substantiate that they were joint in household and totally dependents on the deceased. Therefore, computing the income and applying the deduction of 1/3rd with the multiplier of 05, the compensation payable to the widow of the deceased is re-worked and tabulated as under:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Om Parkash Rajpal
(ii)	Date of accident	23.01.2016
(iii)	Age of the deceased	68 years
(iv)	Monthly income of the deceased	₹ 9000/-
(v)	1/3rd of (iv) above deducted towards personal expenses	(₹ 9000-₹3000) = ₹ 6000/- per month
(vi)	Compensation calculated after applying the multiplier of 5	(₹6000x5x12) = ₹ 3,60,000/-
(vii)	Funeral expenses	₹ 15000
(viii)	Compensation for loss of consortium	₹ 40000
(ix)	Compensation for loss of estate	₹ 15000

Total	₹4,30,000/-

9. As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to appellant No.1 i.e. widow of the deceased shall be ₹ 4,30,000/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the petition till the date of payment.

(JAISHREE THAKUR)
JUDGE

December 05, 2019
vijay saini

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