IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 8324 of 2017 (O&M)
Date of decision : July 04, 2019

Hemlata and others .....Appellants

Versus

Baseer Khan and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr. Vinod Gupta, Advocate
for respondent No. 3.

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LISA GILL, J.

Present appeal has been filed by the claimants for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Gurugram (hereinafter referred to as the 'Tribunal') on account of death of Sanjay vide award dated 02.08.2017.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, son, parents and sisters of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Sanjay on 12.12.2015 in a motor vehicle accident caused due to rash and negligent driving of the offending vehicle, i.e. Bus bearing registration No. DL-1PC-2651 by respondent No.1. The deceased, aged 25 years at the time of the accident was stated to be earning a sum of ₹15,000/- per month while working as a photographer.

Learned Tribunal on considering the evidence on record, facts and circumstances concluded that Sanjay died in the accident which took place on 12.12.2015 due to rash and negligent driving of the offending Bus bearing registration No. DL-1PC-2651 by respondent No. 1. Learned Tribunal while assessing the income of the deceased to be ₹8,500/- per month awarded a sum of ₹15,75,500/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Deduction of 1/4th was effected, keeping in view the number of dependants. Multiplier of 17 was applied as the deceased was 25 years old at that time. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded and a sum of ₹1,50,000/- on account of loss of love and affection besides a sum of ₹25,000/- on account of funeral expenses were also awarded.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants while not disputing the income of the deceased, as assessed by the learned Tribunal, argues that multiplier of 17 has been wrongly applied. Date of birth of the deceased was 10.10.1990, therefore, on the date of accident, he was 25 years and two months old. It is further submitted that increment on account of future prospects should be afforded and compensation under the conventional heads is also meager. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company, however, refutes the said arguments and submits that just and reasonable compensation has been awarded by the learned Tribunal. It is submitted that as deceased was over 25 years old, multiplier of 17 has been correctly applied and excess compensation has been awarded under the conventional heads. It is, thus, prayed that this appeal be dismissed.

I have heard learned counsel for the appellants as well as respondent No. 3 and have gone through the available file.

There is no dispute that Sanjay lost his life in a motor vehicle accident, which took place on 12.12.2015 caused due to the rash and negligent driving of Bus bearing registration No. DL-1PC-2651 driven by respondent No.1. Finding of the learned Tribunal on this issue has attained finality.

As per Ex. P19 i.e. Secondary School Examination Certificate, the date of birth of the deceased was 10.10.1990, therefore, he was 25 years and 02 months old at the time of the accident. In the judgment of the Hon'ble Supreme Court in **Shashikala and others versus Gangalakshmamma and another** 2015(9) SCC 150, the deceased was 45 years, 5 months and 28 days old as on the date of the accident. The Hon'ble Supreme Court observed that the age of the deceased should be taken as 45 years. Keeping in view the above, in the present case, age of the deceased Sanjay has to be taken as 25 years. Therefore, multiplier of 18 instead of 17 is to be applied.

There is no dispute regarding income of the deceased to be ₹8,500/- per month as assessed by the learned Tribunal. Income of the deceased, as assessed by the learned Tribunal, is thus upheld as ₹8,500/- per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increase on account of future prospects at the rate of 40% (₹3400/-) is afforded, as the deceased was 25 years old at the time of accident, which takes income of the deceased to ₹11,900/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, deduction of 1/4th has been correctly applied in this case. The claim petition was filed by the widow, minor child, parents and two unmarried sisters of the deceased (who were married during the pendency of the claim petition). It has come on record that the father of the deceased used to remain unwell and was dependent upon the deceased. The deceased was clearly shouldering the responsibility of the entire family. Therefore, deduction of 1/4th has been correctly applied, thereby rendering income of the deceased to be ₹8925/- (11,900-2975). Applying a multiplier of 18, dependancy of the claimants is assessed as ₹19,27,800/- (₹8925x12x18). The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate (instead of ₹25,000/- for funeral expenses) besides the claimant widow is entitled to ₹40,000/- (instead of ₹1,00,000/-) on account of loss of spousal consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333** and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others,** appellant No. 2 i.e. son of the deceased is entitled to ₹40,000/- on account of loss of parental consortium and appellants No. 3 and 4 to ₹40,000/- on account of loss of filial consortium (instead of ₹1,50,000/- awarded on account of loss of love and affection). Claimants are, thus, entitled to total compensation of ₹20,77,800/- detailed as under:-

Loss of dependency (₹8925x12x18)	₹19,27,800/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium	₹40,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹20,77,800/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants are entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

(Lisa Gill)
Judge

July 04, 2019
rts

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