IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

249 FAO-8483-2017 (O&M)

Date of decision: 09.05.2019

VIPAN BALI ... Appellant

Versus

AMRO AND OTHERS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajeshwar Singh, Advocate for the applicant-appellant.
None for respondents No.1 and 2.

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REKHA MITTAL, J. (Oral)

CM No.27615-CII of 2017

Heard.

Since failure of the alleged eye-witness of occurrence to identify the accused in the criminal proceedings, examined as a witness in the claim proceedings would be of no avail for the appellant, application for additional evidence is not meritorious and accordingly rejected.

Main Case

The driver of car bearing No.PB-07-V-7176 (offending vehicle) is in appeal to assail award dated 25.04.2017 passed by the Motor Accidents Claims Tribunal, Rupnagar whereby compensation has been assessed on account of death of Premjit in a motor vehicular accident that took place on 23.07.2015.

Counsel for the appellant would fairly inform that the appeal has been filed primarily to assail quantum of compensation assessed by the Tribunal. For this purpose, he has few submissions to make. It is argued that the Tribunal has assessed income of the deceased at Rs.15,000/- per month but the deceased was not an income tax assessee. Claimant No.2 is the adult and married son of the deceased and as such, he cannot be held to be dependent on income of the deceased, therefore, deduction for personal expenses should be 50%. Compensation allowed under conventional heads is liable to be restricted to Rs.70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

There is no representation on behalf of respondents No.1 and 2, despite service.

The plea of claimants is that the deceased was a transporter thereby earning Rs.50,000/- per month. The Tribunal has noticed in para 11 of the award that no document was produced as an evidence of income of the deceased to the tune of Rs.50,000/- per month. However, it has been noticed that the claimants produced registration certificates Exs.P3 to P5 and agreements Exs.P6 & P7 to prove that deceased was owner of one tractor, two tempos make Mahindra and had taken on lease two tippers/trucks for the purpose of business as transporter. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time coupled with aforesaid documentary evidence, I do not find any reason to differ with findings of the Tribunal assessing income of the deceased at Rs.15,000/- per month.

The Tribunal has allowed deduction for personal expenses to the extent of 1/3rd. Even if widow of the deceased is held to be sole dependent, there would be no variation in deduction for personal and living expenses of the deceased. In this context, reference can be made to judgment of this Court **Balvir Kaur and others VS. Surender @ Surinder Singh and others, FAO No.8419 of 2015, decided on 27.03.2019.**

Under conventional heads, the Tribunal awarded Rs.2,25,000/- detailed hereunder:-

1. Loss of consortium	Rs.1,00,000/-
2. Loss of love and affection	Rs.1,00,000/-
3. Funeral expenses	Rs.25,000/-

Compensation under conventional heads is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **Pranay Sethi and others's case (supra)** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Accordingly, compensation allowed under conventional heads is reduced to the extent of Rs.1,55,000/-.

In view of what has been discussed hereinbefore, the appeal is partly allowed. The appellant shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

09.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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