IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.1369 of 2015 (O&M)
Date of Decision: 11.04.2019

Poonam Devi and others

......Appellants.

Versus

Naveen Kumar and others

...... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Abhishek Yadav, Advocate
for the appellants.

Mr. Aditya Singh, Advocate
for Mr. S.S.Khurana, Advocate
for respondent no.1.

Service of respondent no,2 dispensed with vide order dated 13.11.2017.

Mr. Punit Jain, Advocate
for respondent no.3-Insurance Company.

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LISA GILL, J.

Appellant-claimants, seek enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Kurukshetra (for short 'tribunal'), vide impugned award dated 07.05.2013, on account of death of Ram Kishan.

Claimants are the widow, minor children and aged mother of the deceased.

As per averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), Ram Kishan, on 20.06.2011, at about 6.00.a.m., was waiting for a bus at bus stand, Dharuhera. In the meantime, a Dumper bearing registration no. HR-55-K-4100, driven by its driver-respondent no.1 in a rash and negligent manner struck against Ram Kishan. As a result thereof, Ram Kishan sustained fatal injuries and died at the spot. FIR No.243 dated 20.06.2011, under Sections 279, 304-A IPC was registered at Police Station Dharuhera, against respondent no.1 in this respect.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Naveen Kumar. Said finding of the learned tribunal has attained finality.

While accepting the deceased to be 29 years old, working as a regular employee (Majdoor) with BSNL, Rewari, income of the deceased was assessed as ₹15,471/- per month. Deduction of 1/ 4th was effected. Multiplier of 17 was applied by the learned tribunal. A sum of ₹5,000/- each was awarded towards loss of loss of estate and funeral expenses, besides a sum of ₹5000/- was awarded towards loss of consortium. Learned tribunal awarded a sum of ₹23,82,063/- along with interest @ 9% per annum from the date of filing of the claim petition till realisation of the amount to the claimants.

Aggrieved therefrom, the present appeal has been filed by the appellants-claimants.

Learned counsel for the appellants submits that salary of the deceased has been wrongly assessed as ₹15,471/- per month while deducting the amount towards House Rent Allowance (for short 'HRA') and other allowances which were a regular feature or component of the salary of the deceased. Increment on account of future prospects should be afforded in terms of the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R. (Civil) 1009** and compensation under the conventional heads be enhanced as well**.** It is thus prayed that this appeal be allowed and the compensation awarded to the appellants be enhanced.

Learned counsel for respondent no.3-Insurance Company, while refuting the above arguments, submits that compensation has been reasonably assessed by the learned tribunal and there is no scope for any enhancement. Learned counsel prays for dismissal of the appeal.

I have perused the file and heard learned counsel for the parties.

There is no dispute regarding the deceased working as a regular employee (Majdoor) with BSNL, Rewari at the time of the accident. Salary slips of the deceased from January 2011 till May 2011 are on record as Ex.P-1 to Ex.P-5. PW-3, J.R.Meena, Sub-Divisional Engineer, BSNL, Rewari, has produced the service record and salary slips of the deceased-Ram Kishan. It is specified by PW-3 that no pension is payable by the department to the family of the deceased. It is a matter of record that as per the salary slips, salary of the deceased for the month of January and February, 2011 was ₹16040/- and for the months of April and May, 2011 was ₹16,962/-. It is evident from a perusal of the salary slip of February and March 2011 that component of income tax has been deducted therefrom. Learned tribunal has erred in deducting the amount of HRA and the other allowances which are shown to be given on a regular basis to the deceased specifically the transport allowance and the skill up-gradation allowance. Income of the deceased is thus assessed as ₹16,932/- per month i.e., ₹10510/- (Basic Pay), ₹4961 (D.A.), ₹1051 (H.R.A), ₹200 (Transport allowance) and ₹210 (Skill up-gradation allowance).

Deceased-Ram Kishan was 29 years old at the time of accident and a regular employee (Majdoor) with BSNL, Rewari. Therefore, future prospects at the rate of 50% are afforded in view of the judgement of the Hon'ble Supreme Court in **Pranay Sethi's** case **(Supra)**. Deduction of 1/ 4th is correctly applied by the learned tribunal. Multiplier of 17 was also correctly applied by the learned tribunal. However, instead of a sum of ₹5000/- each towards loss of estate, funeral expenses, the claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate.

Appellant No.1-widow is held entitled to a sum of ₹40,000/- instead of ₹5000/- on account of loss of consortium. The deceased is also survived by two (02) minor children and an aged mother, who are also entitled to ₹40,000/- on account of loss of parental consortium and ₹40,000/- on account of filial consortium in terms of the judgement of the Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) R.C.R (Civil), 333** and decision dated 14.03.2019 of this Court in FAO No. 2110 of 2016 and other connected matters**.**

Compensation towards the claimants on account of death of Ram Kishan, is thus re-worked as under:-

1.	Total income of deceased	₹16,932/- p.m.
2.	Total income after additional of future prospects at the rate of 50%	₹16932/- (₹16932/-+₹8466/-) i.e. ₹25,398/-

3.	Deduction of 1/ 4th on account of personal expenses	₹25,398/- (₹25,398*1/4=₹6350/-) = ₹19,048/-
4.	Annual dependency after applying multiplier of 17	₹19,048/- x 12 x 17= ₹38,85,792/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Loss of spousal consortium @40,000 to appellant No.1	₹40,000/-
8.	Loss of parental consortium to appellants No.2 and 3	₹40,000/-
9.	Filial consortium to appellant no.4, mother of the deceased	₹40,000/-
	Total Compensation =	**₹40,35,792/-**

Claimants shall be entitled to interest on the enhanced compensation amount at the rate of 7.5% per annum from the date of filing of petition till realization. Needless to say that the amount, if any, already disbursed to the claimants shall stand deducted. 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

11.04.2019
s.khan

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