IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 9982 of 2014 (O&M)
Date of decision : April 9, 2019

Jagdish Kaur and others .....Appellants

Versus

Davinder Singh and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikrant Singh Cooner, Advocate for
Mr. Jagram Singh Cooner, Advocate
for the appellants.

Mr. Rajbir Singh, 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, Hoshiarpur (hereinafter referred to as the 'Tribunal') on account of death of Harjinder Singh vide award dated 28.04.2014.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow, two minor children and widow mother of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Harjinder Singh on 29.07.2012 in a motor vehicle accident, caused due to rash and negligent driving of the offending vehicle, Truck bearing registration No. PB-07AB-9003, by respondent No.2. FIR No. 98 dated 30.07.2012 under Sections 279/304A/427 IPC was registered. Harjinder Singh was claimed to be working as a permanent Home Guard with the State of Punjab earning ₹12,000/- per month.

Learned Tribunal on considering the evidence on record, facts and circumstances concluded that Harjinder Singh died in the accident which took place on 29.07.2012 due to rash and negligent driving of the offending Truck bearing registration No. PB-07AB-9003 by respondent No. 2. Learned Tribunal while assessing income of the deceased to be ₹11,194/- per month awarded a sum of ₹10,24,416/- 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 1/3rd was effected, keeping in view the number of dependants. Spilt multiplier was applied (till the age of retirement multiplier of 8 was applied and post his retirement, multiplier of 6 was applied). Additionally, a sum of ₹10,000/- on account of loss of consortium was awarded besides a sum of ₹10,000/- on account of funeral expenses.

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

Learned counsel for the appellants submits that there is no dispute regarding income of the deceased assessed as ₹11,194/- per month by the learned Tribunal, however, in terms of judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increment on account of future prospects at the rate of 30% should be afforded. It is further submitted that learned Tribunal has erred in applying a split multiplier. Moreover, deduction of 1/4th instead of 1/3rd should be effected and compensation under the conventional heads be also enhanced. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company while refuting the arguments raised by learned counsel for the appellants submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is further submitted that the deceased being a Home Guard has to be treated as a daily wage employee. Therefore, he is entitled to only 25% increment on account of future prospects It is submitted that the compensation has been rightly assessed, thus, impugned award dated 28.04.2014 be upheld.

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

There is no dispute that Harjinder Singh lost his life in a motor vehicle accident, which took place on 29.07.2012 caused due to the rash and negligent driving of Truck bearing registration No. PB-07AB-9003 driven by respondent No. 2. Finding of the learned Tribunal on this issue has attained finality.

There is no dispute regarding income of the deceased to be ₹11,194/- per month as assessed by the learned Tribunal. Harjinder Singh was admittedly working as Home Guard with the State of Punjab receiving a salary of ₹11,194/- per month, as per salary certificate (Ex.PW5/A). Salary certificate has been duly proved by PW5 Ajay Kumar, Clerk, in the office of District Commandant, Punjab Home Guard, Hoshiarpur who had brought the service record pertaining to deceased Harjinder Singh. While referring to the cross examination of PW5, it has been argued by learned counsel for the respondents that the deceased was a daily wage employee, therefore, he is entitled to only 25% increment on account of future prospects. I do not find any merit therein. The period for which the deceased had been working as Home Guard and the fact that he was being paid monthly salary, I deem it appropriate to award increment of 30% instead of 25% on account of future prospects in terms of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), which takes income of the deceased to ₹14,552/- 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***, deduction of 1/4th instead of 1/3rd is to be applied keeping in view the number of dependants, thereby rendering income of the deceased to be ₹10914/-(14552-3638). Learned Tribunal has further erred in applying split multiplier in the given facts and circumstances of the case. It is a matter of record that the deceased was 41 years old at the time of the accident. Therefore, applying a multiplier of 14, dependancy of the claimants is assessed as ₹18,33,552/- (₹10914 x12x14). The claimants are also entitled to ₹15,000/- each for funeral expenses (instead of ₹10,000/- for funeral expenses) and loss of estate besides the claimant – widow is entitled to ₹40,000/- on account of loss of consortium. Appellants No. 2 and 3 i.e. children of the deceased are entitled to ₹40,000/- on account of loss of parental consortium and appellant No. 4 to ₹40,000/- on account of loss of filial consortium. Reference in this respect can gainfully be made to 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**.

Claimants are, thus, entitled to total compensation of ₹19,83,552/- detailed as hereunder:-

Loss of dependency (₹10914 x12x14)	₹18,33,552/-
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	₹19,83,552/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be 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

April 9, 2019
rts

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