

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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FAO No.6056 of 2014 (O&M)

Date of decision: 18.02.2020

DHARAM DEVI AND OTHERS

... Appellants

Versus

SURENDER SINGH AND OTHERS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vikas Kumar, Advocate for
Mr. Sunil Kumar Bhardwaj, Advocate for the appellants.
Mr. Sanjay Vashisth, Advocate for respondents No.1 and 2.
Mr. Sachin Ohri, Advocate for insurance company.

REKHA MITTAL, J. (Oral)

CM No.16667-68-CII of 2014

Prayer in these applications is for condonation of delay of 764 days in refiling and 169 days in filing the appeal.

In view of averments made in the applications coupled with that provisions of the Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, applications are allowed and delay of 764 days in refiling and 169 days in filing the appeal is condoned subject to the condition that claimants shall forgo interest for the period of delay, in case compensation is enhanced.

Main Case

The claimants are in appeal seeking additional compensation on account of death of Rajender in a motor vehicular accident that took place on 28.08.2009.

The Tribunal awarded Rs.15,41,663/-, detailed hereunder:-

Monthly income of the deceased	Rs.23,518/-
Addition in income for future prospects	30%
Multiplier	13
Deduction for personal expenses	1/4 th
Deduction of income tax	30%
Loss of dependency	Rs.35,77,041/-
Deduction in respect of financial assistance under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006')	Rs.19,75,512/-
Net compensation	Rs.15,11,663/-

Expenses on funeral	Rs.10,000/-
Loss of estate	Rs.10,000/-
Loss of consortium	Rs.10,000/-

The deceased was an employee of Haryana Government and he died at the age of 48 years and 8 months. His gross salary was Rs.23,518/-. The annual salary would be Rs.2,82,216/-. The Tribunal has wrongly applied deduction of income tax after adding 30% towards future prospects as income tax is to be deducted from annual salary and thereafter addition for future prospects is to be applied. In this context, reference can be made to judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. This apart, the Tribunal has applied income tax @ 30% without examining if income of the deceased falls in that slab making tax liability @ 30%. After deducting income tax (Rs.12,588/-) payable on annual salary of Rs.2,82,216/-, net annual income is Rs.2,69,628/-. Claimants shall be entitle to addition in income for future prospects @ 30%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency qua salary of deceased is calculated at Rs.34,17,534/- $[(2,69,628 \times 13) + (30\% \text{ future prospects}) - (1/4^{\text{th}} \text{ deduction for personal expenses})]$.

The plea of claimants is that the deceased was earning Rs.33,000/- per month i.e. salary Rs.23,518/- per month and additional income from agriculture. The Tribunal, in para 17, has noticed that claimants produced copy of the jamabandi which shows that land was joint. The Tribunal denied income from agricultural land with the findings that there is no evidence regarding income from agriculture and the land remains with the family and claimants have not brought on record that the family had engaged an assistant.

Perusal of jamabandi, copy whereof was supplied during the course of hearing, reveals that land measuring 288 kanal 17 marlas out of which land measuring 287 kanal 16 marlas was Nehri was co-owned by various persons who appeared to be members of family of the deceased. The share of Rajender son of Mani Ram is approximately 43 kanal i.e. 5 acres. The claimants have certainly lost services of the deceased to manage the land owned by him jointly with other co-owners. Taking a clue from

notification issued by the State of Haryana fixing minimum wage at the relevant time coupled with that the deceased was working with DHBVNL and must be spending most part of the day in doing his job, value of services of deceased to manage the land is assessed at Rs.2000/- per month. Claimants shall be entitle to addition in income for future prospects @ 25%. Deduction for personal expenses would be 1/4th and multiplier to the tune of 13. In this manner, loss of dependency with regard to managing skills of deceased is calculated at Rs.2,92,500/- [(2000 x 12 x 13) + (25% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

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

Total compensation is Rs.37,80,034/-. After deducting Rs.19,75,512/- qua financial assistance available to family of the deceased, net compensation is Rs.18,04,522/- and additional amount is Rs.2,62,859/- (18,04,522 - 15,41,663), payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay of 764 days in refiling and 169 days in filing the appeal, to widow of the deceased, to be invested in fixed deposit for a period of two years.

The appeal is partly allowed in the aforesaid terms.

18.02.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No