In the High Court of Punjab and Haryana at Chandigarh

FAO No. 8427 of 2015 (O&M)
Date of Decision:10.12.2020

United India Insurance Company Limited

---Appellant

vs.

Harjit Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Harsh Aggarwal, Advocate
for the appellant
Mr. Ravinder Arora, Advocate
for respondent No. 1 to 4

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Rekha Mittal, J.

The present appeal directs challenge against award dated 11.9.2015 passed by the Motor Accidents Claims Tribunal, Rupnagar (in short "the Tribunal") whereby compensation has been awarded on account of death of Rajinder Singh in a motor vehicular accident that took place on 15.11.2014.

The Tribunal awarded Rs. 16,36,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 10,000/-
Addition in income for future prospects	30%
Deduction for personal expenses	1/4th
Multiplier	13
Loss of consortium	Rs. 1 lakh
Transportation charges	Rs. 5000/-
Funeral expenses	10,000/-

Counsel for the appellant would inform that appeal has been filed to assail only quantum of compensation. It is argued that the Tribunal has wrongly assessed income of the deceased at Rs. 10,000/- per month despite noticing that no document was produced regarding running of poultry farm and agricultural land will be inherited by legal heirs including two major sons of the deceased. It has also been held by the Tribunal that major sons can carry on dairy business and agriculture work. It is argued with vehemence that in view of observations made by the Tribunal, income of the deceased, at best, can be assessed at minimum wage available at the relevant time.

Another submission made by counsel is that the Tribunal has wrongly allowed addition for future prospects @ 30%. In this regard, counsel has made two fold submissions namely that even if deceased is held to be 47 years old, addition for future prospects can be to the extent of 25%. It is argued that as per voter card issued by the Election Commission of India (Annexure A-1), sought to be produced by way of additional evidence by filing CM No. 586-CII of 2016, Rajinder Singh deceased was born in the year 1961, therefore, he was more than 50 years of age at the time of accident, as such, respondents-claimants are entitle to addition for future prospects @ 10%.

Counsel has also assailed findings of the Tribunal allowing deduction for personal and living expenses to the tune of 1/4th. It is argued that application for compensation has been filed by the widow, two major sons and mother of the deceased. According to counsel, as major sons can not be held to be dependent upon the deceased, admissible deduction for personal expenses should be 1/3rd, in the light of ratio laid down by Hon'ble the Supreme Court **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298**.

Counsel for the respondents-claimants, on the contrary, would argue that compensation assessed needs enhancement in exercise of power under Order 41 Rule 33 CPC. To substantiate his contention, it is argued that in view of oral and documentary evidence produced before the Tribunal, detailed in para 9 of the award, income of the deceased is to be assessed at a rate higher than Rs. 10,000/- per month. With regard to age of the deceased, it is argued that in reply to the application for additional evidence, claimants have produced copy of passport of Rajinder Singh wherein his date of birth has been recorded and as per the said date of birth, deceased was less than 50 years of age at the time of unfortunate occurrence. Counsel has supported findings of the Tribunal allowing deduction of 1/4th for personal and living expenses of the deceased. He would pray that adequate compensation may be allowed under conventional heads. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **The New India Assurance Company Limited vs. Smt. Somwati and others** and other connected cases, Civil Appeal No. 3093 of 2020 (arising out of SLP (C) No. 23478 of 2019) decided on 7.9.2020.

I have heard counsel for the parties, perused the paper book particularly the award.

Counsel for the appellant has not challenged findings of the Tribunal that deceased was an agriculturist and involved in the business of sale of milk. It has been proved on the basis of documentary evidence in the form of receipts regarding sale of crop (Exs. P-2 to P-9) and sale of milk

(Ex. P-11). As has rightly been held by the Tribunal that agriculture land would be available to family of the deceased including his two major sons. Similarly, sons of the deceased can carry on the business of dairy farming. There is nothing on record suggestive of the fact that sons of the deceased are not looking after the land and dairy business. In the given circumstances, respondents-claimants shall be entitle to loss of services of the deceased for looking after the aforesaid two businesses. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time coupled with the deceased being an agriculturist and dairy farmer, the Tribunal has correctly assessed income @ Rs. 10,000/- per month. In the given circumstances, I do not find any reason to interfere in assessment of income either at the behest of the appellant or respondents. Accordingly, findings of the Tribunal with regard to assessment of income are affirmed.

The Tribunal has extended benefit of future prospects @ 30%. When the case is examined in the light of enunciation laid down in **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270,** even if the deceased was less than 50 years, claimants shall be entitle to future prospects @ 25%. Coming to age of the deceased, Tribunal has held that deceased was 47 years old and accordingly applied multiplier of 13. When the case is viewed in the light of date of birth of deceased recorded in his passport, there is no escape from conclusion that deceased was less than 50 years of age and accordingly the claimants shall be entitle to future prospects @ 25%. The multiplier applied by the Tribunal is also affirmed.

The claim was made by widow, mother and two adult sons of the deceased. There is nothing on record suggestive of the fact that sons of the deceased had any independent source of income much less that they were not dependent on their father. As such, deduction of 1/4th allowed by the Tribunal can not be faulted with. In this view of the matter, loss of dependency is calculated at Rs, 10000 X 12 X13= 15,60,000 + 3,90,000 (25%)= 19,50,000 -6,50,000(1/3rd)= 13,00,000/-.

Under conventional heads, the claimants shall be entitle to consortium @ Rs. 40,000/- each. In addition, they shall be entitle to Rs. 15,000/- for funeral expenses and Rs. 15,000/- for loss of estate.

Total compensation is Rs. 14,90,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs. 1,46,000/-. The insurance company is left at liberty to recover the excess amount, if already paid, by moving an appropriate application.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

10.12.2020
paramjit

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