IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.7743-2014 (O&M)
Date of Decision: 18.03.2021

Kamla and others

.......Appellants

Versus

Sandeep and others

......Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Narender Kaajla, Advocate for the appellants.

Mr. Raman Chawla, Advocate for respondents No.1 and 2.

Mr. Ajay Singla, Advocate for respondent No.3.

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TEJINDER SINGH DHINDSA J.

This is the claimant's appeal seeking enhancement of compensation.

It may be noticed that vide award dated 01.03.2014 passed by the Motor Accident Claims Tribunal, Hisar, a compensation amount of Rs.7,73,000/- has been awarded in favour of the claimant's on account of death of Parveen Kumar in a motor vehicle accident that took place on 04.12.2012.

Claim petition under Section 166 of the Motor Vehicles Act was filed by the appellants, sister and brother of deceased Parveen Kumar, claiming compensation to the tune of Rs.50,000,00/- from the driver, owner and insurer of the offending vehicle i.e. tractor bearing registration No.HR-

48-4939. It was asserted that on 04.12.2012, Parveen Kumar (since deceased) was riding a motor-cycle which was stuck by the offending tractor being driven in a rash and negligent manner and on account of injuries suffered, Parveen Kumar had died.

Since the only issue involved in the instant appeal is with regard to quantum of compensation, this Court would be adverting to the findings recorded by the Tribunal pertaining to issue No.2 which was framed in the following terms:-

"Whether the petitioners are entitled to recover the compensation from the respondents, if so to what extent?OPP

The Tribunal returned findings in favour of the claimants and held that the death of Parveen Kumar occurred on account of injuries suffered in the accident that took place on 04.12.2012 involving the offending/insured Tractor and which was being driven in a rash and negligent manner by the driver. Insofar as the quantum of compensation is concerned, age of the deceased was taken as 17 years and his monthly income was assessed on a notional basis as Rs.4,000/- per month. An addition in income towards future prospects 50% was awarded. 50% deduction from the income was made towards personal and living expenses of the deceased who was admittedly a bachelor. Multiplier of 18 was applied to the multiplicand and a sum of Rs.1,00,000/- was granted towards loss of love and affection to mother of the deceased. That apart a sum of Rs.25,000/- was awarded towards Transportation and Funeral Ceremony. The total compensation amount computed by the Tribunal was Rs.7,73,000/- payable alongwith interest @ 7.5 % per annum from the date of filing of the claim petition till actual realization. The liability for payment of compensation was held to be joint and several between the driver/owner of the tractor and the insurance company.

It would be apposite to take note that the Tribunal took a view that the sister and brother of deceased Parveen Kumar are not entitled to any compensation as they could not be treated as dependants upon the deceased. Accordingly, it was only the parents who were held entitled to the compensation from the respondents.

I have heard counsel for the claimants/appellants as also counsel representing the contesting respondent No.3/Insurance Company.

In the considered view of this Court there is a scope of marginal enhancement of the compensation amount. However, it may be clarified at the very outset that the instant appeal has again been preferred not only by the parents of the deceased but even by the minor sister and brother of the deceased Parveen Kumar. The view taken by the Tribunal would prevail insofar as the enhanced amount of compensation is concerned i.e. it is the parents of the deceased who would benefit from the enhanced amount and not claimants/appellants No.3 and 4 herein.

Counsel representing the claimants has argued that the monthly income of Rs.4,000/- insofar the deceased Parveen Kumar is concerned has been assessed much on the lower side. Counsel has placed reliance upon the DC rates notified at the relevant point of time to assert that the minimum rates of wages of Class-IV employees in various departments under the State of Haryana was fixed as Rs.6,600/-. It is urged that the notional income ought to have been assessed by the Tribunal as Rs.6,600/- pertaining to deceased Parveen Kumar.

This Court is unable to accept such submission raised by counsel for the claimants. The DC rates/minimum rates of wages of the employees are admissible only to employees serving under different departments. Concededly Parveen Kumar (since deceased) was not serving as an employee. Rather it was the case projected on behalf of the claimants that Parveen was doing the work of *Paledari* and was earning Rs.15,000/- per month and used to contribute all his earnings for the welfare of the family. No evidence, however, had been adduced on behalf of the claimants to prove earnings of Rs.15,000/- per month.

Counsel for the respondent-Insurance company has very fairly brought to the notice of this Court a notification issued by the competent department under the State of Haryana pertaining to the year 2012 i.e.the year of the accident and whereunder the minimum wages admissible to an unskilled worker were Rs.4967.29/-.

In the considered view of this Court, the notional income of deceased Parveen Kumar ought to have been assessed as per prevailing minimum wages for an unskilled worker. The amount of Rs.4967.29/- towards minimum wages for an unskilled worker can be rounded off to Rs.5000/- per month. The monthly income of deceased Parveen Kumar as such is assessed at Rs.5000/-.

The second submission raised by counsel for the claimants seeking enhancement of the compensation amount is that the Tribunal has not awarded any amount towards loss of consortium to the parents of the deceased. Undoubtedly, the Hon'ble Supreme Court in the case of ***New***

India Assurance Company Ltd. Vs. Smt. Somwati and others (2000) 4 PLR 1, has held that apart from spousal consortium, filial consortium and parental consortium are also admissible. Filial consortium is an amount awarded for loss of consortium towards a child's society, affection and companionship given to a parent. Parental consortium would be an amount for loss of consortium towards a parent's society, affection and companionship given to a child. The Apex Court while accepting the award of filial as also parental consortium, however, took a view that there would be no justification for award of compensation under a separate head of ***"Loss of Love and Affection"***

Adverting to the facts of the present case even though no compensation had been awarded to the parents/claimants towards filial consortium, yet a lump-sum amount of Rs.1,00,000/- has been granted towards loss of love and affection to the mother of the deceased Parveen Kumar.

Under such circumstances this Court is not inclined to accept the prayer on behalf of the claimants for being awarded compensation under the head of "***Filial Consortium"*** separately. The amount already awarded by the Tribunal towards loss of love and affection is kept intact.

Counsel for the parties are *ad idem* that age of the deceased has been rightfully assessed as 17 years based upon the postmortem report Ex.P-4. Even the multiplier of 18 has been rightfully been applied as per parameters laid down by the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 ACJ 1298.*** Even the 50% deduction applied from the income of the deceased towards his personal expenses has been rightfully made as Parveen Kumar was admittedly not married.

The amount of Rs.25,000/- awarded towards transportation and funeral rites are directed to be enhanced to Rs.70,000/- under conventional heads i.e. loss of estate and funeral expenses etc.

The Tribunal has awarded 50% towards future prospects insofar as the income of the deceased is concerned, such percentage, however, is scaled down to 40% keeping in view the admitted position that the deceased was below 40 years of age and was self-employed and not on any permanent salaried job. Such enhancement of 40% towards future prospects would be as per guidelines laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil), 1009***

In view of the above, the compensation amount is re-assessed and calculated as follows:-

Sr. No.	Component/Head	Revised Calculation
1	Income Rs.5000	40% increased towards future prospects i.e.5000+2000=Rs.7000
2.	50% cut-off towards personal and living expenses of the deceased	Rs.7000-Rs.3500=Rs.3500/-
3.	Compensation after applying multiplier of 18	Rs.3500x12=Rs.42000/-x 18=Rs.7,56,000/-
4.	Amount already awarded by Tribunal towards loss of love and affection	Rs.1,00,000/-
5.	Conventional head i.e.funural expenses etc.	Rs.70,000/-
6.	Total	Rs.9,26,000/-

The afore calculated revised/enhanced compensation amount be released in favour of appellants No.1 and 2 i.e. parents of the deceased alongwith interest @ 6 per cent from the date of filing of the claim petition till actual realization.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

March 18, 2021
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No