IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2846-2001 (O&M)
Date of Decision: 21.09.2022

Piara Singh and another …Appellants

Versus

Garish Kumar and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Navjot Kaur, Advocate for
Mr. Vishal Gupta, Advocate for the appellant.
Mr. R.N. Singhal, Advocate
for the respondent No.3-Insurance Company.

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<u>HARKESH MANUJA, J.(ORAL)</u>

By way of present appeal, the appellants have challenged the award dated 17.04.2001 passed by learned Motor Accident Claims Tribunal, Rupnagar (for short 'Tribunal').

Brief facts leading to the present case are that the son of the appellants, namely, Ravinder Singh @ Lakhbir Singh, who was going on a scooter bearing registration No.CHT-691 along with one Gurdial Singh, met with an accident on account of rash and negligent driving of Maruti Van bearing registration No.CH-02-0204 (hereinafter referred to as 'the offending vehicle') being driven by respondent No.1. As a result of accident, which took place on 13.03.1999, Ravinder Singh received multiple injuries and later on died.

The parents/ appellants filed a claim petition before the learned Tribunal, wherein it was contended that the deceased was 17 years of age and working as a carpenter, besides being a student. Learned Tribunal vide its impugned award dated 17.04.2001 determined the amount of compensation to the tune of Rs.90,000/- to be payable to the claimants along with interest @ 9% till realization of the compensation amount. The learned Tribunal also recorded a finding of rash and negligent driving against respondent No.1. However, as the vehicle was insured with respondent No.3 and respondent No.1 was possessing a valid Driving Licence, the liability to pay the compensation was fastened upon respondent No.3-Insurance Company.

By way of present appeal, the appellants are seeking enhancement of compensation.

Learned counsel for the appellants/ parents contends that the learned Tribunal fell into error while ignoring the evidence available on record so as to establish that the deceased at the time of accident was working as a Carpenter, besides being a student and was earning a sum of Rs.2000/- per month. He further submits that statement made by the claimant- appellant No.2 to this extent has gone unrebutted. He again submits that considering the age of the deceased as 17 years, the amount of compensation should have been assessed by applying the multiplier of '18' after including benefit of future prospects as well. Further contends that the compensation should have also been awarded on account of conventional heads i.e. funeral expenses, consortium and loss of estate.

On the other hand, learned counsel for respondent No.3-Insurance Company contends that since the deceased was unmarried, the dependency has to be taken as 50%. He further submits that in the absence of any documentary evidence, the income of the deceased could not be considered to be Rs.2000/- per month, as stated by the claimants.

Having heard learned counsel for both the parties and going through the paper-book as well as records of the case, I find force in the contentions raised on behalf of the claimants/appellants. Appellant No.2-claimant has appeared as PW1 and has specifically stated that her son was working as a Carpenter and earning Rs.2000/- per month. This part of the statement made by her, has gone unrebutted. Merely on the ground that no documentary evidence has been produced in this regard, the statement made by claimant/ appellant No.2 cannot be discarded. As normally, in case of a person working in an unorganized sector, he cannot be expected to have proof in the shape of documentary evidence as regards his earnings. Reliance in this regard can be placed on the judgment of Hon'ble Supreme Court in **Syed Sadiq and others Vs. Divisional Manager, United Insurance Company Limited,** (2014) 4 SCC 735, wherein in para 8, it has been observed as under:-

> *"8. The appellant/claimant in his appeal further claimed that he had been earning Rs.10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs.3500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income………"*

Accordingly, I find no reason to disbelieve the statement made by appellant No.2/claimant and thus hold that the deceased, at the time of accident was earning Rs.2000/- per month.

Besides this, with respect to the compensation awarded under the other conventional heads as well as multiplier, applying the principles of law laid down by Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others*** and in ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, the claimant are entitled for Rs.16,500/- as compensation under the head of funeral expenses, loss of consortium (filinial) is to be awarded to the tune of Rs.44,000/- x 2 and Rs.16,500/- towards loss of estate by applying 10% increase under the conventional heads. As regards, the grant of future prospects is concerned, the deceased happened to be self-employed, in view of the law laid down in ***Pranay Sethi's*** *case (supra)*, 2017(4) RCR (Civil) 1009, the same should have been awarded @ 40% of the annual income.

However, I find force in the arguments raised on behalf of respondent No.3-Insurance Company that as the deceased was a bachelor, the dependency has to be taken as 50%.

In view of what has been stated hereinabove, the appellants/claimants shall be entitled for the grant of following compensation:-

Sr. No.	***Nature***	***Amount in Rupees***
1.	*Annual Income of deceased (Rs.2000x 12)*	*Rs.24,000/-*
2.	*Add 40% of Future prospects*	*Rs.9600/-*
3.	*Total Income (Rs.24000/- + Rs.9600/-)*	*Rs.33600/-*
4.	*Multiplier of 18 as per age of 17 years (Rs.33,600 /- X 18)*	*Rs.6,04,800/-*
5.	*Loss of future earning capacity/ income*	*Rs.3,02,400/-*

	[50% (percentage disability) of total income]	
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium (Rs.44000x2)*	*Rs.88,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs. 4,23,400/-*
	Amount Awarded by the Tribunal	*Rs.90,000/-*
	Enhanced Amount	*Rs.3,33,400/-*

The appellants shall be entitled to interest of 9% per annum on the amount of compensation as awarded by learned Tribunal from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted out of the enhanced compensation.

Disposed off in the above terms.

Pending miscellaneous applications, if any, stand disposed of.

September 21, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*