IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

436 FAO-3305-2013
Date of Decision: 15.09.2022

Sunita and others ---Appellants

versus

Mukhtiar Singh and others ---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. M.S.Khillan, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No.3- Insurance Company.

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JAGMOHAN BANSAL, J. (ORAL)

1. The appellants through instant appeal are seeking enhancement of compensation awarded vide award dated 18.10.2012 passed by Motor Accident Claims Tribunal, Karnal (for short 'Tribunal') whereby Tribunal has awarded a sum of Rs.16,58,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition.

2. The facts emerging from record and necessary for the adjudication of present appeal are that Naresh Kumar-husband of Sunita (claimant No.1) met with a motor vehicular accident on 26.01.2011 and as a result of which, he suffered multiple injuries and

passed away on the spot. He was an approved Govt. building contractor and a regular income tax payee. The claimants filed a petition under Section 166 of Motor Vehicles Act, 1988 (for short, '1988 Act') seeking compensation on account of death of Naresh Kumar. The Tribunal considering age, income of deceased determined compensation arising on account of death of Naresh Kumar and awarded a sum of Rs.16,58,000/-.

3. Learned counsel for the appellants contended that deceased was an income tax payee, thus, there was no question to assess income on notional basis. The deceased in his return for the different assessment years had disclosed income as detailed below :-

Assessment year	Income (in Rs.)
2006-07	65000
2007-08	1,03,250
2008-09	1,28,170
2009-10	1,23,503
2010-11	1,77,500

He further contended that appellants are entitled to enhancement of compensation on account of 'future prospects', 'loss of consortium', 'loss of estate' and 'funeral expenses'. The Tribunal has wrongly applied multiplier 14 considering age of deceased more than 40 years whereas he was less than 40 years. In the impugned order itself, date of birth and date of incident is recorded, still age is considered more than 40 years.

4. Per contra, learned counsel for the respondent-insurer

conceded that appellants are entitled to re-determination of compensation as per law settled by a five-Judge Bench of Hon'ble Supreme Court in **National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680** and a three-Judge Bench of Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121.** However, he contended that the Tribunal has rightly considered the income of deceased Rs.10,000/- per month.

5. I have perused the record and heard arguments of both sides.

6. I have perused income tax returns of deceased for last 5 years. There is growth of income as per returns. There is no reason to disbelieve the returns. The return of assessment year 2010-11 was filed on 29.07.2010. The Tribunal in its order while dealing with issue No.2 has noted that return for the assessment year 2010-11 was filed after the date of accident i.e. 26.01.2011. Learned counsel for the appellants during the course of arguments stated the same fact. However, on perusal of Ex.P-10 i.e. return for the assessment year 2010-11, I find that return was filed on 29.07.2010 i.e. much prior to date of death i.e. 26.01.2011. The last return as per record of Tribunal was of assessment year 2010-11 which was filed on 29.07.2010. The gross total income as per return was R.1,77,500/- and after deductions, it comes to Rs.1,49,009/-. Considering the trend of increase in income disclosed, the Court confronted both the counsels with all the returns, to which learned counsels agreed that

annual income may be assessed Rs.1.5 lakhs instead of Rs.1.2 lakhs as assessed by the Tribunal. The deceased was less than 40 years so the Tribunal has wrongly applied multiplier 14 whereas it should be 15. The dispute between the parties before this Court was confined to income of deceased and multiplier. In view of documents on record and consent of both sides, the income of deceased is considered Rs.1.5 lakhs per annum and multiplier is applied 15. Applying these parameters and judgements of Hon'ble Supreme Court, amount of compensation is re-determined as below:-

Particulars	Income (in Rs.)
Annual income of the deceased	1,50,000
Future prospects	40%
Income after addition of future prospects	2,10,000
Deduction on account of personal expenses	1/4th
Assessed income	157500
Multiplier (15)	23,62,500
Loss of estate	16500
Loss of consortium (44000X5)	2,20,000
Funeral expenses	16500
Total	26,15,500

4. The appellants are entitled to interest @ 7.5% from the date of filing of claim petition till the date of actual payment. It is made clear that amount already paid would be deducted from claim determined hereinabove.

5. The respondent-Insurer is directed to make payment within a period of eight weeks from today.

6. The appeal is disposed of in the above-stated terms.

(JAGMOHAN BANSAL)
JUDGE

15.09.2022
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No