IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3262-2018 (O&M)
Date of decision: 09.11.2022

Ramandeep Kaur and others

...Appellant(s)

Versus

Raghbir Pal Singh and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Rajbir Singh, Advocate for the appellant(s).

Mr. Punit Jain, Advocate for respondent No.3.

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H.S. MADAAN, J. (Oral)

On account of death of Charanjit Singh son of Sh. Satpal Singh, statedly aged about 29 years and working as a skilled mason with China State Construction Engineering Company at UAE, as such getting 300 AED i.e. Rs.54,000/- per month, in a road side accident which took place on 28.09.2016 at about 2.15 PM, in the area of village Ladda near Dhuri on account of rash and negligent driving of TATA Tempo vehicle bearing registration No.PB13-AB-5537 (for short 'the offending vehicle') by respondent No.1 Raghbir Pal Singh and such vehicle being owned by respondent No.2 Kanchan Singh and insured with respondent No.3 The New India Assurance Co., Ltd., Sangrur, legal representatives of the deceased i.e. his widow Ms. Ramandeep Kaur aged about 28 years, minor daughter Amritpal Kaur, aged about 11 years and minor son Karanpreet Bawa, aged about 06 years had brought a claim petition under Section

166 of the Motor Vehicles Act against aforesaid driver, owner and insurance company of the offending vehicle, impleading Mrs. Bhinder Kaur, mother of the deceased as proforma respondent No.4.

2. That claim petition bearing No.MACT-37 of 2017 was contested by all the three respondents, however, vide award dated 12.09.2017, Motor Accident Claims Tribunal, Sangrur accepted the petition and granted compensation of Rs.29,45,000/- to claimants and proforma respondent No.4 with interest @ 7% p.a., payable by respondents No.1 to 3 jointly and severally. The apportionment of the compensation was also done which is detailed in the impugned award. However, the claimants did not feel satisfied with the award and have approached this Court by way of filing an appeal, notice of which was given to respondent No.3 and it has put in appearance through counsel.

3. I have heard learned counsel for the parties besides going through the record.

4. Learned counsel for the appellants has attacked the impugned award stating that the deceased was employed with a foreign company based in UAE and was earning Rs.54,000/- per month in Indian currency, however, the Tribunal has erroneously taken the income of the deceased as Rs.20,000/- and furthermore, no addition for future prospects has been made which is mandatory in terms of the law laid down by the Apex Court in judgment in **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009.**

5. Whereas, learned counsel for respondent No.3-Insurance Company has contended that the deceased being a citizen of India had

gone abroad for some time and even if it is taken that he was earning Rs.54,000/- per month in Indian currency for a limited period, that does not go to show that he had that earning capacity throughout his life and the Tribunal has rightly assessed the income of deceased to be Rs.20,000/- including future prospects. As such no fault can be found with such approach of the Tribunal.

6. However, after hearing the rival contentions, I find that the Tribunal has rightly taken the earning of the deceased to be Rs.20,000/- per month considering all facts and circumstances including the fact that he was a skilled mason and had gone to UAE employed with a foreign company there. His employment in a foreign country, getting wages at enhanced rate cannot be taken to be his earning capacity throughout his life time, because there is nothing to suggest that his such employment would have continued for a long period. The deceased might have returned to India after some time and then probable earning from such avocation in India is to be considered. The Tribunal by taking into view all the factors has rightly taken the probable monthly income of the deceased to be Rs.20,000/-. However, the Tribunal has not made any addition towards future prospects. The observation that Rs.20,000/- per month covers future prospects, in my view is not proper and appropriate when the Apex Court in the judgment Pranay Sethi (supra) had specifically observed that in case the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be given where the deceased was below age of 40 years. In this case, the deceased was aged about 30 years, as such addition of 40% of his income

should have been made towards future prospects and it was wrongly denied to the claimants.

7. Learned counsel for the claimants has further contended that as has been held in judgment **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, and reiterated in judgment Pranay Sethi (supra) in case where the deceased was married and number of dependent family members are 4 to 6, deduction should be 1/4th. The Tribunal had though considered the number of dependents to be 04 i.e. claimants and proforma respondent No.4, awarding compensation to all four of them but erroneously made deduction of 1/3rd which is applicable where number of dependent family members is 2 to 3.

8. Learned counsel for respondent No.3 has contended that mother of deceased though impleaded as proforma respondent was not dependent upon her, as such is not to be taken as legal heir of the deceased.

9. After hearing these contentions, I find that the Tribunal itself had taken the claimants as well as proforma respondent No.4 to be legal heirs of the deceased, awarding compensation to all four of them, therefore, deduction of 1/4th should have been made instead of 1/3rd.

10. No other point was agitated by either of the counsel.

11. Resultantly, the appeal succeeds. The amount of compensation awarded to the claimants is enhanced in the way that monthly income of deceased taken as Rs.20,000/- per month, 40% of the

amount is added as future prospects, total coming to Rs.28,000/- per month and deduction of 1/4th i.e. Rs.7000/-, the residue comes out to Rs.21,000/-. Multiplier of 17 has been rightly used by the Tribunal. The total compensation awarded comes out to Rs.42,84,000/-. Adding the compensation awarded under conventional heads of 2,25,000/-, the total compensation comes out to Rs.45,09,000/-. The rate of interest will remain as such at 7% p.a., as awarded by the Tribunal from the date of filing of the claim petition so would be the apportionment of compensation. The liability of the respondents would also remain intact in terms of the award passed by the Tribunal. It is clarified that the claimants would be entitled to get interest @ 7% on enhanced compensation from the date of filing of claim petition till actual realization.

12. The appeal stands disposed of.

09.11.2022 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No