IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 7457/2017

Date of decision: 12.12.2022

Shiv Kumar and another

……….Appellants

Vs.

Jaspal Singh and others

……….Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Anurag Chopra, Advocate for the appellants/claimants

Mr. Harinder Kumar, Advocate for respondent no.3-Insurance Company

Nidhi Gupta, J.

This is an appeal filed by the claimants seeking enhancement of compensation of Rs.10,33,000/- awarded by Motor Accident Claims Tribunal, Patiala (for short 'the Tribunal') vide Award dated 7.3.2017 passed in MACT No.131/ 7.4.2016 filed under Section 166 of the Motor Vehicles Act, 1988 by the appellants on account of death of their son Sanjiv Kumar in a motor vehicular accident that took place on 4.12.2015 due to rash and negligent driving of Tata 407 bearing registration No. PB-11BU-1633 (hereinafter referred to as 'the offending vehicle') by respondent no.1-Driver. Appellants before this Court are parents of deceased Sanjiv Kumar.

Learned Tribunal on the basis of pleadings and evidence on record concluded that deceased Sanjiv Kumar died in a motor vehicular accident that took place on 4.12.2015 due to rash and negligent driving of the offending vehicle by respondent No. 1, which is owned by respondent no.2, and insured by respondent no.3. At the time of accident age of the deceased was 21 years as mentioned in Ex.P-2 Post Mortem Report. It is claimants' case that the deceased was working as an Electrician at the time of his death and earning Rs.15,000/- per month. However, as nothing was placed on record by the claimants in support of this assertion, the Tribunal took the income of the deceased to be Rs.7000/- per month which is that of semi-skilled person. Further, Tribunal applied the multiplier of 18 as per age of the deceased; and made a deduction of $1/3^{rd}$ of his income as the claimants-appellants were dependent upon the deceased at the time of his death. Rs. 25,000/- was granted towards funeral expenses and accordingly total compensation of Rs.10,33,000/- was granted with interest @ 9% per annum. Respondent no.3-insurance Company was held liable to pay compensation to the claimants in equal share being the indemnifier of respondents 1 and 2 in equal share.

It is submitted by the learned counsel for the appellants that learned Tribunal has erred in not granting future prospects and consortium to the claimants as admissible to them as per the law laid down in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104; and National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680.**

Learned counsel for the respondent Insurance Company submitted that Tribunal is in error in making a deduction of $1/3^{rd}$ whereas in conformity with the decision of the Hon'ble Supreme Court 50% deduction ought to have been made as the deceased was admittedly a bachelor.

In response, learned counsel for the appellants submits that it has been held by the Tribunal that the parents of the deceased were dependent upon him. It is further submitted that as per Notification issued by the Government of Punjab the minimum wages admissible to an unskilled labour at the relevant time was Rs.7800/- per month.

I have heard learned counsel for the parties.

Perusal of the record of the case shows that the age of the claimants is 47 and 42 years respectively and therefore, they cannot be held to be dependent upon the deceased and therefore, deduction of 50% should be made from the income of the deceased as he was bachelor at the time of his death. This is in conformity with the law laid down by the Hon'ble Supreme Court in **Sarla Verma's** case (supra). I further find merit in the submission of the learned counsel for the appellants that the income of the deceased should be taken as per minimum wage notification issued by the State of Punjab. Therefore, income of the deceased is taken as Rs.7800/- per month. Consortium of Rs.40,000/- each is also awarded in compliance with the aforesaid law. Accordingly, the compensation payable to the appellants is reworked as under:-

Income	Rs.7800
Future prospects @ 40%	Rs.3100/-
Monthly salary	Rs.10,900
Deduction @ 50%	Rs.5450/-
Multiplier	18
Total dependency	5450x12x18 = Rs.11,77,200/-
Loss of consortium Rs.40,000x2	Rs.80,000/-
Funeral expenses	Rs.25,000/-
Total compensation	Rs.12,82,000/-
Less awarded by the Tribunal	Rs.10,33,000/-
Total Enhanced	Rs. 2,49,200/-

Appellants are held entitled to interest @ 9% on enhanced compensation from date of filing claim petition till date of realisation. Ratio apportionment as well as and manner of disbursement of enhanced compensation amongst the claimants shall remain the same as determined by the ld. Tribunal.

Appeal stands allowed in the above terms. Pending applications if any stand disposed of.

(Nidhi Gupta)
Judge

12.12.2022
Joshi

Whether speaking/reasoned **Yes**

Whether reportable **Yes/No**

RAJINDER PARSHAD JOSHI
2022.12.16 12:42
I attest to the accuracy and integrity of this document