IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO-1133-1993 (O&M)
Date of decision: 18.12.2023

Smt. Satya Chawla Samra

....Appellant

Versus

Jarnail Singh and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : None for the appellant

Mr. Amit Kumar Goyal, Advocate for respondent No.4-Insurance Company

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AMAN CHAUDHARY. J.

1. The present appeal has been filed by the claimant-appellants for enhancement of the compensation amount awarded by the learned Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') vide award dated 02.04.1993, on account of death of Surinder Singh Samra in a motor vehicular accident.

2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch in the year 2011. Since the case is pending for more than 30 years, learned counsel for the insurance company has no objection, if the same is decided on the basis of the available record.

3. It has been averred in the grounds of the appeal that the Tribunal erred in apportionment of the compensation amount, as the claimant, being the wife of the deceased, was only entitled for the same and not respondent Nos.5 and 6 being major daughter and son. Even otherwise, the amount awarded is on the

lower side.

4. On the other hand, learned counsel for the Insurance Company submits that the Tribunal has assessed the compensation in light of the evidence led by the claimant-appellant, thus, he prays for the dismissal of the present appeal.

5. Heard and perused.

6. There is no dispute that the death of the deceased-Surinder Singh Samra, occurred in a motor vehicular accident caused by respondent No.1-driver of the offending truck. Pertinently, since there is no challenge to the factum of the accident, the manner of its taking place, as well as liability fastened upon the driver, owner and insurer of the offending vehicle, to be joint and several, thus, this issue does not warrant any further scrutiny.

7. As is apparent from the award, the claimant-appellant, being the wife and son and daughter of the deceased filed two separate claim petitions before the tribunal vide which they were awarded a sum of Rs.1,00,000/-, out of which, a sum of Rs.60,000/- was granted to the appellant and Rs.20,000/- each to respondent Nos. 5 and 6. The son and daughter, who being major, cannot be denied the compensation, as in **National Insurance Company Limited vs. Birender & Ors,** (2020) 11 SCC 356, Hon'ble the Supreme Court had observed that, "It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact

whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only."

8. With regard to the enhancement of the compensation, from the award, it is proved on record that the deceased was getting pension to the tune of Rs.1,738/- per month, which can be taken as his income. Gainfully referring to **Sarla Verma and others vs. Delhi Transport Corporation and another,** 2009(3) RCR (Civil) 77, **National Insurance Company Limited vs. Pranay Sethi and others** 2017(4) RCR (Civil) 1009 and **Janabai vs. ICICI Lambord Insurance Co. Ltd.,** (2022) 10 SCC 512 the appellant is held entitled for the compensation under the conventional heads i.e. Rs.18,000/- for funeral expenses, Rs.18,000/- for loss of estate, and Rs.48,000/- loss of consortium and Rs.96,000/- (48,000x 2) for filial consortium to daughter and son. The deceased being 66 years, the multiplier of 5 should be applied and also there are three claimants, the deduction of 1/3rd ought to be made.

9. Consequently, the total compensation comes to Rs.2,49,520/- (Rs.1,738 x 2/3rd (dependency) x 12 x 5 (multiplier) +Rs.1,80,000/- (conventional heads). Therefore, the enhanced compensation of Rs.1,49,520/-, over and above the amount of Rs.1,00,000/- already awarded by the Tribunal, alongwith interest at the rate of 7.5% per annum from the date of filing of the present appeal, till its realization, shall be paid to the claimant-appellant and respondent Nos. 5 and 6, as ordered by the Tribunal, within a period of 2 months from the date of receipt of a certified copy of this judgment. Failing which, the amount shall accrue an interest as awarded by the Tribunal.

10. Modifying the award to the aforesaid extent, the present appeal is

disposed of.

11. Registry is directed to send a copy of the order to the concerned Tribunal for necessary compliance.

(AMAN CHAUDHARY)
JUDGE

18.12.2023
M.Kamra

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