101

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.368 of 1991
Date of Decision: 02.03.2023

Swinder Kaur

…Appellant

Versus

Swarn Kaur and others

…Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. S.S. Swaich, Advocate and
Mr. Abhay S. Mann, Advocate and
Mr. Saleem Akhtar, Advocate
for the appellant.

Service of notice upon respondent No.1 already dispensed with vide the order dated 16.02.2023.

Respondent No.2 is reported to have died.

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company.

* * * * *

MEENAKSHI I. MEHTA, J. (Oral)

Feeling aggrieved and dis-satisfied with the Award as passed by learned Motor Accident Claims Tribunal, Ludhiana (for short 'the Tribunal') on 08.08.1990, whereby the appellant-claimant No.1 (here-in-after to be referred as 'the appellant') has been granted compensation to the tune of Rs.1,44,000/-, on account of the death of Baldev Singh in a motor vehicular accident and respondents No.1 to 3 have been directed to pay the same to her within one month, failing which they would be liable to pay the interest thereon @ 12.5% per annum till its realization, she (appellant) has preferred the instant appeal for seeking the enhancement of the amount of compensation.

2. Bereft of unnecessary details, the facts culminating in the filing of the present appeal, are that the appellant-wife and claimant No.2 Ujaggar Singh, the father of the above-named deceased, filed a petition against the respondents, i.e the respective owner, driver and the insurer of the Tanker bearing registration No.C-11-7747 (for short 'the offending Tanker'), for claiming compensation of Rs.05 (five) lac, while averring that on the ill-fated day, i.e 07.05.1988, the deceased was going towards Village Machhiwara on his Moped and was keeping it on the correct side on the road and his nephew named Deepy was pillion riding on the same. When they reached in the area of Village Sherian, the offending Tanker, which was being driven by respondent No.2 in a rash and negligent manner, came from their backside and it hit their Moped and resultantly, the deceased was crushed under its wheels and died instantaneously.

3. Respondents No.1 and 2 filed their joint written statement whereas respondent No.3 filed its separate written statement contesting the claim, as set-forth by the claimants in their petition, on various grounds. Then, the rejoinder was filed and the issues were framed on 06.12.1989. It is pertinent to mention here that as mentioned in para No.2 in the Award, claimant No.2 died during the pendency of the petition and his LRs were impleaded therein. However, after appreciating and evaluating the evidence as led by the parties on the record and hearing their learned counsels, the

Tribunal has passed the impugned Award, granting compensation only to the appellant-claimant No.1, as already discussed in the opening para of this judgment.

4. I have heard learned counsels for the appellant-claimant No.1 as well as learned counsel for respondent No.3-Insurance Company in this appeal and have also perused the record carefully.

5. Learned counsels for the appellant contend that the Tribunal has wrongly taken the depositions, made by AW3 Amrik Singh regarding the monthly carry-home salary of the deceased being Rs.2119.60Ps, into consideration for calculating the amount of compensation whereas in the salary-certificate of the deceased, i.e Exhibit A1, his monthly salary has been certified to be Rs.2434.60Ps and the compensation should have been worked out on the basis of the same and moreover, no compensation has been granted to the appellant on the counts of future prospects, loss of estate, funeral expenses and loss of consortium as well and therefore, she is entitled to the enhancement of the amount of compensation.

6. Per-contra, learned counsel for respondent No.3-Insurance Company argues that the Tribunal has held the appellant to be the sole dependent of the deceased and it being so, 50% share of his (deceased's) salary is to be deducted towards his personal expenditure and further, the deceased was about 43 years old at the relevant time and accordingly, the multiplier of '14' is to be applied to calculate the amount of compensation and even otherwise, the liability of respondent No.3 would be limited to Rs.1.5 lac only in view of the Insurance Policy Annexure R-1 and to add to

it, the appellant has already been adequately compensated by the Tribunal and hence, she has no occasion to ask for any further enhancement in the amount of compensation.

7. Undisputedly, the deceased was working as a Teacher in the Government School and was about 43 years old at the time of his death in the afore-referred accident. In salary-certificate Exhibit A1, his monthly salary, as on 07.05.1988, has been mentioned to be Rs.2434.60Ps (rounded off to Rs.2435/-) and the same has to be taken into consideration for calculating the amount of compensation. Keeping in view the age of the deceased at the time of the above-said accident and also the observations made by the Constitution Bench of Hon'ble the Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and Others 2017(16) SCC 680***, an amount equivalent to 30% of the afore-mentioned monthly salary of the deceased, i.e Rs.730/-, has to be added therein on the score of future prospects and on adding the same, his salary comes out to be (2435+730) =Rs.3165/- per month.

8. The Tribunal has awarded compensation to the appellant only while holding her to be the sole dependent of the deceased. Therefore, 50% of the above-assessed monthly salary of the deceased, i.e Rs.1582.50Ps, has to be deducted therefrom towards his living and personal expenses, leaving the balance amount of Rs.1582.50Ps, say Rs.1583/-, to be taken as the monthly dependency of the appellant and her annual dependency would be (Rs.1583x12)=Rs.18,996/-. Considering the afore-mentioned age of the deceased as well as the observations as made by the Apex Court in ***Sarla***

Verma and Others vs. Delhi Transport Corporation and Anr 2009(6) SCC 121, the multiplier of '14' would be applicable for calculating the amount of compensation and when so applied, the said amount comes out to be (Rs.18996x14) =Rs.2,65,944/-.

9. Besides the above-said amount, the appellant is granted a sum of Rs.16,500/- towards the loss of estate and another amount of Rs.16,500/- for the funeral expenses and she is also entitled to the sum of Rs.44,000/- as compensation for the loss of the spousal consortium.

10. Further, a perusal of the insurance policy Exhibit R1 reveals that an amount of Rs.100/- has been shown therein to have been paid as the additional premium for unlimited increased third party liability. Therefore, the argument, as raised by learned counsel for respondent No.3 regarding the limited/capped liability of the Insurance Company to pay the amount of compensation, is not tenable at all.

11. Resultantly, the net enhanced amount of compensation, as shall be payable to the claimants, is worked out as under:-

Head	**Compensation awarded by the Tribunal**	**Compensation awarded by this Court**	**Enhancement**
Dependency	Rs.1,44,000/-	Rs.2,65,944/-	Rs.1,21,944/-
Loss of Estate	NIL	Rs.16,500/-	Rs.16,500/-
Funeral expenses	NIL	Rs.16,500/-	Rs.16,500/-
Loss of Consortium	NIL	Rs.44,000/-	Rs.44,000/-
Net enhanced amount	**(3,42,944-1,44,000)= Rs.1,98,944/-**		

12. As a sequel to the fore-going discussion, the appeal in hand is hereby allowed to the effect that the appellant-claimant No.1 Swinder Kaur

is entitled to the net enhanced compensation amounting to **Rs.1,98,944**/-, over and above the amount of Rs.1,44,000/- as already awarded to her by the Tribunal and the said enhanced amount shall carry the interest @ 7.5% per annum from the date of filing of the claim petition till its realization and shall be payable to her in terms of the impugned Award.

(MEENAKSHI I. MEHTA)
JUDGE

02.03.2023
neetu

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*