121-A IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4575-2009
Date of Decision :24.03.2023

Master Harsh and others …Appellants

versus

Ashlem and others ….Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Arun Singhal, Advocate for the appellants.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

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B.S. Walia, J. (Oral)

CM-5237-CII-2023

For the reasons as are mentioned in the application, the same is allowed.

Appellant Nos.1 and 2 are allowed to proceed the appeal in their own name.

CM-5239-CII-2023

Prayer in the application is for fixing actual date of hearing in the main appeal.

Notice of the application.

Mr. Rajneesh Malhotra, Advocate, accepts notice on behalf of respondent No.3 and states that he has no objection to the prayer made in the application.

In view of the position noted above, the application is allowed. Main appeal is taken up for hearing for today itself.

FAO-4575-2009

1. Challenge in the appeal is to award dated 02.03.2009, passed

by the learned Motor Accident Claims Tribunal, Panipat, (hereinafter referred to as 'the Tribunal'), awarding compensation of Rs.7,30,000/- along with interest @ 7.5% per annum to two minor children and father-in-law of deceased, Anju Devi.

2. Learned counsel for the appellants contends that despite late Smt. Anju Devi having filed an income tax return for the year 2008-2009 Ex.P-9, reflecting her income as Rs.1,16,800/-, the Tribunal rejected the same solely on the ground that there was no proof of the work being done by the deceased in support of which the income tax return had been filed, therefore, assessed the income of the deceased as Rs.5,000/- per month and thereafter by applying multiplier of '18' and awarding Rs.10,000/- on account of transportation charges, awarded total compensation of Rs.7,30,000/- along with interest @ 7.5% per annum.

3. Learned counsel contends that the income tax return was filed by the deceased prior to her death and in view of the respondents having failed to lead any evidence to disprove the earnings of the deceased, ignoring the income tax return and treating the income of the deceased as Rs.5,000/- per month was legally unsustainable. Learned Counsel further contends that besides, despite entitlement for addition of 40% of the established income of the deceased for working out future prospects, no amount had been awarded on account of future prospects nor had any amount been awarded on account of loss of parental consortium, loss of estate and funeral expenses.

4. Learned counsel for respondent No.3/Insurance Company does not dispute the aforementioned claim of the appellants but contends that in view of the deceased being '27' years of age, multiplier of '17' is applicable as per the decision of Hon'ble the Supreme Court in **Sarla**

Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77, and further, no amount is payable on account of transportation charges as the same is covered under the head of loss of estate.

5. I have considered the submissions of learned counsel.

6. Although, income tax return for the year 2008-2009, was proved on record as Ex.P9, reflecting the annual income of deceased-Anju Devi to be of Rs.1,16,800/- and no evidence contrary to the same wasled by the respondents, yet the Tribunal took into account the annual income of the deceased @ Rs.60,000/-. In view of the income tax return having been filed by the deceased prior to her death, I see no reason to doubt the same especially since no evidence has been led by the respondents to controvert the earnings of the deceased.

7. Counsel for the parties are ad idem on the factual aspect of the matter, namely of the deceased being 27 years of ageand of having died in a motor vehicular accident on 26.04.2008 leaving behind two minor children besides her father-in-law. Since the deceased was 27 years of age, therefore, in terms of paragraph No.32 of the decision of Hon'ble the Supreme Court in Sarla Verma's case (supra), multiplier of '17' is applicable and not '18'. Further, as per paragraph No.61 of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra), the deceased being self-employed and being less than 40 years of age, 40% of the established income of the deceased is liable to be added towards future prospects. Likewise, in view of paragraph No.61(viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra), the appellants are held entitled to award of Rs.16,500/- on account of loss estate and like amount on account of funeral expenses. Likewise, the two

minor children of the deceased i.e.appellant Nos.1 and 2 are also entitled to Rs.44,000/- each on account of loss of parental consortium. As regards amount of Rs.10,000/- awarded by the learned Tribunal on account of transportation charges, the same is not admissible being covered under the head of loss of estate.

8. Accordingly, in the light of the position noted above, details of compensation awarded by the learned Tribunal and the compensation assessed by this Court, are as under :-

Sr. No.	Head	Amount assessed by Tribunal in Rupees	Amount assessed by this Court in Rupees
1.	Annual income of the deceased	Rs.60,000/-	Rs.1,16,800/-
2.	Future prospects	Nil	40% of Rs.1,16,800/- = 46720 (Total 1,16,800 + 46720 = Rs.1,63,520/-)
3.	Deduction	1/3rd of Rs.60,000/- = Rs.20,000/-	1/3rd of Rs.1,63,520/- = Rs.54,507/-
4.	Dependency	60000-20000 = 40000	1,63,520-54507= 1,09,013/-
5.	Multiplier applied	18	17
6.	Compensation awarded	40000x18 =7,20,000/-	1,09,013x17= Rs.18,53,221/-
7.	Funeral Expenses	Nil	Rs.16,500/-
8.	Loss of Estate/ Transportation Charges	Rs.10,000/- awarded on account of transportation	Loss of Estate - Rs.16,500/-
9.	Loss of consortium	Nil	Rs.44,000/- each to appellant Nos.1 and 2 i.e. Rs.44,000 x 2 = Rs.88,000/-.
10.	Interest	7.5% per annum	7.5% per annum
Total		7,30,000/-	Rs.19,74,221/-

9. Accordingly, in the light of the position noted above, the appeal is allowed and award modified to the extent noted above and as against compensation of Rs.7,30,000/- awarded by the learned Tribunal along with interest at the rate of 7.5% per annum, compensation payable to the appellants/claimants is enhanced to Rs.19,74,221/- along with interest @ 7.5% per annum with effect from the date of the claim petition till date of payment, less payment if any already made, in the proportion as ordered by the learned Tribunal.

(B.S. Walia)
Judge

24.03.2023
rajesh

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