214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1275-2016
Date of Decision :05.05.2023

Harpreet Kaur and others …Appellants

Versus

M.D. HRTC &Ors. ….Respondents

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

Present : Mr. Ashwani Arora, Advocate and
Mr. Vipul Sharma, Advocate for the appellants.

Mr. Neeraj Khanna, Advocate for respondent No.1.

Mr. Maninder Arora, Advocate for respondent No.6.

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B.S. Walia, J. (Oral)

1. Prayer in the appeal is for modification of award dated 18.11.2015, passed by the learned Motor Accident Claims Tribunal, SAS Nagar (hereinafter referred to as "the Tribunal") and for enhancement of compensation of Rs.15,56,100/- awarded to the appellants i.e. widow,minor child and parents of Narinder Singh, who died in a motor vehicular accident at the age of 25 years on 15.06.2014 (date of birth 10.03.1989).

2. Learned Counsel for the appellants contends that, the deceased was working as a driver and PW-1, Ashok Kumar i.e. Proprietor of M/s Ashok Fruit Company who was examined as witness made a statement that he had employed the deceased as his driver against monthly salary of Rs.10,000/-, however,the learned tribunal disbelieved the evidence of PW-1, on the ground that no document had been placed

on the record to indicate that the witness was running a company by the name of M/s Ashok Fruit Company or that he used to pay salary @ Rs.10,000/- per month to the deceased, therefore, for the purpose of computing compensation, treated the deceased as an unskilled labourer and assessed his monthly salary at Rs.5800/-.

3. Learned counsel for the appellants refers to the affidavit of PW-1, Ashok Kumar as also his cross-examination, as per which, the deceased was employed by PW-1 as his driver against salary of Rs.10,000/- per month and that as and when required, the deceased, used to drive the car for the work of M/s Ashok Fruit Company as well and on said basis contends that deceased was engaged by Ashok Kumar and not as an employee of M/s Ashok Fruit Company. Learned Counsel contends that it is common knowledge that drivers engaged by individual are not issued appointment letters besides, are paid salary in cash, therefore in the circumstances, the deceased is liable to be treated as have been working as a driver more so as he possessed a driving license for a LMV.

4. Learned Counsel for the appellants also relies upon the decision of Hon'ble the Supreme Court in **Minu Rout and another vs. Satya Pradyumna Mohapatra and others 2013 (4) RCR (Civil) 871**, to contend that in the case of a car driver who died in a motor vehicular accident in the year 2004, income of Rs.3,000/- assessed by the Tribunal was enhanced by Hon'ble the Supreme Court to Rs.6,000/- per month and since in the instant case date of accident / death of the deceased is 15.06.2014 i.e. more than one decade after the assessment of the income of the deceased car driver in Minu Rout's case (supra) @ Rs. 6000/- per month, income of the deceased in the instant case is liable to assessed @

Rs.15,000/- per month.

5. Learned Counsel for the appellants further relies on the decision of Hon'ble the Supreme Court in **Shashikala and others vs. Gangalakshmamma and another 2015 (2) RCR (Civil) 510** to contend that although the deceased was more than 25 years of age, yet he had not completed the 26th year on account of his date of birth being 10.03.1989 and since date of accident / death was 15.06.2014, therefore, it was multiplier of '18' which was to be applied and not '17'. Relevant extract of the decision of Hon'ble the Supreme Court in Shashikala's case (supra) is reproduced as under:-

> *"Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident i.e. 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier 14 which is the appropriate multiplier and the same is maintained. Total loss of dependency is calculated at Rs.16,82,310/- (Rs.1,20,165/- x 14)".*

6. Learned Counsel for the appellants further contends that in view of the decision of Hon'ble the Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others 2017 (4) RCR (Civil) 1009,Satinder Kaur @ Satwinder Kaur vs. United India Insurance Co. Ltd. Law Finder Doc Id # 1729112** as well as **Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram, 2018 (4) RCR (Civil) 333**, each of the claimants are entitled to Rs.44,000/- on account of loss of consortium besides Rs.16,5000/- is liable to be awarded on account of loss of estate.

6. A perusal of the award reveals that the Tribunal by treating

RAJESH KUMAR
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I attest to the accuracy of
this order./judgment

the deceased as an unskilled labourer assessed his monthly income @ Rs.5800/-, and thereafter by applying multiplier of '17', by taking 50% of the income of the deceased towards future prospects, and by imposing deduction of 1/4th of the income of the deceased towards his personal expenses on account of his leaving behind four dependents and by awarding Rs.1 Lakh on account of loss of spousal consortium, Rs.1 Lakh on account of loss of love and affection to the minor child and Rs.25,000/- on account of funeral expenses, awarded total compensation of Rs.15,56,100/- along with interest @ 6% per annum.

7. Learned counsel for respondent No.6 does not dispute the date of birth, number of dependents, deduction made @ 1/4th, as also of the appellants/claimants being entitled to award of Rs.16,500/- on account of loss of estate but contends that as against 50% of the income of the deceased taken into account for the purpose of working out of future prospects, 40% is to be taken into account in view of the decision in Pranay Sethi's case (Supra) as also in view of the deceased being less than 40 years of age. Learned Counsel further contends that income of the deceased was rightly taken into account as unskilled labourer, moreover,Rs. 1 lakh awarded on account of loss of loss of spousal consortium is liable to be scaled down to Rs. 44,000/- in view of the decision in Pranay Sethi's case (Supra), no compensation is admissible on account of loss of love and affection in view of the decision in Satwinder Kaur's case (Supra) besides, besides Rs.25,000/- awarded on account of funeral expenses is liable to be scaled down to Rs.16,500/ in view of the decision in Pranay Sethis case (Supra).

6. I have heard learned counsel for the parties and with their

assistance gone over the record.

5. Admittedly, no documentary proof in respect of deceased having been engaged as driver by PW-1 Ashok Kumar or of his paying him salary of Rs. 10,000/- per month was led by PW-1. However, by taking into account the affidavit filed by PW1 of his having engaged the deceased as a driver besides the ground reality that drivers engaged for work by individuals are not issued appointment letters and are paid salary in cash as also in view of the deceased admittedly being in possession of a valid driving license for a LMV, I do not find any reason not to accept the evidence of PW-1 merely on the ground that no documentary proof had been led of the deceased having been engaged as a car driver or occasionally driving the car for the fruit company as and when required.

6. In the aforementioned background and having accepted the plea of the appellants to treat the deceased as a driver instead of as an unskilled labourer, the question arises as to the assessment of the income of the deceased. Apart from the fact that PW-1 in his affidavit before the Tribunal stated that he was paying Rs.10,000/- per month to the deceased, Hon'ble the Supreme Court in **Minu Routs case (Supra)** in the case of a car driver who died in a motor vehicular accident in the year 2004, enhanced income of Rs.3,000/- assessed by the Tribunal to Rs.6,000/- per month and since in the instant case date of accident / death of the deceased is 15.06.2014 i.e. more than one decade after the assessment of the income of the deceased car driver in Minu Rout's case (supra) @ Rs. 6000/- per month, income of the deceased in the instant case even by conservative method is liable to be assessed @ Rs.10,000/- per month. Accordingly, in the light of the position noted above, while

treating the deceased to have been employed as a driver by PW-1 and by taking into account the decision of Hon'ble the Supreme Court in Minu Rout's case (supra) as also the plea of learned counsel for the appellant, I assess the income of the deceased @ Rs.10,000/- per month. Further in view of the decision of Hon'ble the Supreme Court in Shashikala's case (supra), it is held that multiplier of '18'would be applicable instead of '17'. Likewise, in view of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra), SatwinderKaurs case (supra) and Magma's case (suipra) as against Rs.1 Lakh awarded on account of loss of spousal consortium to the widow of the deceased, each of the appellants/claimants are held entitled to Rs.44,000/- on account of loss of spousal/parental/filial consortium. Besides, in view of paragraph No.61 (viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra), as against Rs.25,000/- awarded on account of funeral expenses, the appellants/claimants are held entitled to Rs.16,500/-.The appellants/claimants are also held entitled to Rs.16,500/- on account of loss of estate. As regards Rs.1 Lakh awarded by the Tribunal on account of loss of love and affection, the same is not admissible in view of the decision of Hon'ble the Supreme Court in Satinder Kaur's case (supra). As regards 6% rate of interest awarded by the Tribunal, the same is enhanced to 9 % per annum in view of the decision of Hon'ble the Supreme Court in Kirti and another vs. Oriental Insruance Company Ltd.- Law Finder Doc ID #1795020 i.e. a case involving accident of the year 2014 as is the position in the instant case.

8. Accordingly, in the light of the position noted above, details of compensation awarded by the Tribunal and the compensation assessed

by this Court is as under :-

Sr. No.	Head	Amount assessed by Tribunal in Rupees	Amount assessed by this Court in Rupees
1.	Income of the deceased	Rs.5800/- per month	Rs.10,000/-
2.	Future prospects	50% of Rs.5800/- = 2900 (Total Rs.5800/- + Rs.2900/- = Rs.8700/-)	40% of Rs.10000/- = 4000 (Total Rs.10000 + 4000= Rs.14000/-)
3.	Deduction	1/4th of Rs.8700/-= Rs.2175/-	1/4th of Rs.14,000/- = Rs.3500/-
4.	Dependency	8700-2175= 6525	14000-3500= 10500/-
5.	Multiplier applied	17	18
6.	Compensation awarded	6526x12x17= 13,31,100-	10,500x12x18 = 22,68,000/-
7.	Love and affection	Rs.1,00,000/-	Nil
8.	Loss of Consortium	Rs.1,00,000/-	Rs.1,76,000/- (Rs.44,000/- to each of the appellants i.e. 44,000 x 4 = Rs.1,76,000/-)
9.	Funeral Expenses	Rs.25,000/-	Rs.16,500/-
10.	Loss of Estate	Nil	Rs.16,500/-
11.	Interest	6% per annum	9% per annum
Total		Rs.15,56,100/-	Rs.24,77,000/-

7. Accordingly, in the light of the position noted above, the appeal is allowed, award modified and as against compensation of Rs.15,56,100/- awarded by the learned Tribunal, the appellants/claimants are held entitled to award of compensation of Rs.22,77,000/-along with interest @ 9% per annum with effect from the date of the claim petition till date of payment, less payment if any already made. Payment be made

to the appellants/claimants in the proportion as ordered by the learned Tribunal within four weeks from date of receipt of certified copy of order.

(B.S. Walia)
Judge

05.05.2023
rajesh

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