IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3612 of 2016 (O&M)
Date of Decision: 03.08.2023

Neelima and Ors.

......*Appellants*

Versus

Kunal and Ors.

.....*Respondents*

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Amit Singla, Advocate
for the appellants.

Mr. Kuldeep Sheoran, Advocate
for respondents No.1 and 2.

Mr. Dinesh Kumar Prajapati, Advocate
for respondent No.3-Insurance Company.

GURBIR SINGH, J (ORAL)

CM No.13556-CII-2023

1 The present application has been filed under Order 22 Rule 3 read with Section 151 CPC for impleading the legal heirs of deceased Neelima-appellant No.1, widow of late Sh. Deepak.

2 It is stated that appellant No.1 expired leaving behind her Legal representative as mentioned in the application.

3 For the reasons mentioned in the application, which is supported by an affidavit, the same is *allowed*. LR of appellant No.1 as shown in the amended memo of parties is ordered to be impleaded through appellant No.1 since deceased, subject to just exceptions.

4 Amended memo of parties is taken on record.

5 Registry to place the same at appropriate place.

FAO No.3612 of 2016

1 The present appeal is filed by the appellants/claimants for enhancement of compensation and modification of Award dated 18.09.2015 passed by the learned Motor Accident Claims Tribunal, Hisar (for short 'the Tribunal').

2 As per the case of the appellants (hereinafter called claimants) the husband of claimant No.1 son of claimant No.2 and father of claimant No. 3 died in the road side accident leaving behind them as his legal heirs and dependants. During the pendency of the appeal, claimant No.1-Neelima died and her sole legal representative claimant No.3 is impleaded through her.

3. As held by learned Tribunal the respondent No.1 was driving TATA ACE vehicle bearing No.HR-39B-6764 in a rash and negligent manner. The said vehicle was owned by respondent No.2-Bansi Lal and insured by respondent No.3. Divesh (since deceased) was aged about 24 years at the time of accident. He was running a Battery shop, near Bishnoi Mandir, Hisar and was earning Rs.30,000/- per month. The version of respondents that accident took place due to the negligent act and conduct of the deceased himself was rejected. The driver of offending vehicle was holding valid driving license. The compensation was granted and all the respondents were held jointly and severally liable to pay the amount of compensation.

4 Learned counsel for the claimants have argued that deceased was income tax assessee and as per the income tax returns for the year 2012-13 Ex.P3 total gross income of deceased was Rs.1,76,171/-. As per income tax returns for the year 2013-14 Ex.P4 , the gross total income of deceased

was Rs.1,81,164/-. Learned Tribunal did not consider the gross income and deducted the income from other sources. No future prospects were granted.

5 Learned counsel for respondent No.3 has argued that the learned Tribunal has rightly held that the income from other sources could be from house rent or from the interest on FDR etc. Said income has rightly not been considered by the learned Tribunal for assessing the amount of compensation. It is further argued that under the conventional head, a sum of Rs.2,50,000/- has been awarded whereas in view of the law laid down in case '***National Insurance Company Limited Versus Pranay Sethi and others,*** ***2017 (4) RCR (Civil) 1009'*** , only sum of Rs.70,000/- could be awarded under the conventional head i.e. loss of consortium, funeral expenses and loss of estate.

6 I have heard submissions of learned counsel for the parties.

7 In the Income tax returns for the assessment year 2012-13 (Ex. P3) and for the assessment year 2013-14(Ex.P4) it is not explained what are the other sources of income shown in the aforesaid income tax returns. There is no other evidence about the other sources of this income. Claimants are required to stand on their own legs. When there is any income from some investments or receipt of rent etc then same cannot be taken into consideration. The income of deceased which is due to his personal effort can only be taken into consideration for assessing the amount of compensation.

8 I am of the view that learned trial Court had rightly held that the income from other sources could not be taken into consideration for assessing the amount of compensation. Since the deceased was only 24 years old, so 40% of the future income was required to be taken into consideration

for assessing the amount of compensation. Learned Tribunal has erred in not granting the future compensation and is required to award Rs.40,000/- as consortium to the claimant No.1, Rs.15,000/- as funeral expenses and Rs.15,000/- as loss of estate. In view of law laid down in case *'Pranay Sethi'* cited (supra) claimants are entitled for only Rs.70,000/- under conventional head.

9 In the light of the above, the impugned award is modified. The amount of compensation is assessed as under:-

Total income of the deceased	1,30,005/-
1/3rd deduction	43335/- (130005-43335=86670)
Future prospects 40%	34,668 (86670+34668=1,21,338)
Multiplier	18 (121338 x 18) = 21,84,084/-
Compensation under conventional head	70,000
Total	Rs.22,54,084/-

10 The claimants are entitled to receive the same along with interest @ 7.5% per annum from the date of filing the petition till its realization. The other terms as mentioned in the award shall remain same, since claimant No.1 has expired leaving behind claimant-Navya as legal heir, so share of claimant No.1 shall be disbursed to claimant-Navya only, who has been impleaded as legal representative of claimant No.1.

11 Appeal stands disposed of.

(GURBIR SINGH)
JUDGE

03.08.2023
jyoti3

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