219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4866-2016
Date of Decision :22.02.2023

Ramesh Kumar and another ….Appellants

versus

Joginder Singh and Ors. ….Respondents

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

Present : Mr. Devender Punia, Advocate for the appellants.

Mr. Charanjit Sharma, Advocate for respondent No.3/Insurance Company.

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B.S. Walia, J. (Oral)

[1] Prayer in the appeal is for enhancement of compensation of Rs.5,77,440/- granted by the learned Motor Accident Claims Tribunal, Hisar (for short – "the Tribunal") vide award dated 25.02.2016. Learned Counsel contends that compensation payable is liable to be enhanced by assessing appropriate income of the deceased, applying correct multiplier, taking into account future prospects as also by awarding compensation of Rs.16,500/- on account of loss of estate,besides loss of filial consortium to the appellants/claimants on account of death of their son Satish Kumar in a motor vehicular accident on 08.08.2013.

[2] A perusal of the award of the learned Tribunal reveals that the deceased was 20 years of age, a student of ITI Diploma and died in a motor vehicular accident on 08.08.2013.

[3] Learned Counsel for the appellants contends that the learned Tribunal took into account the age of the deceased as 20 years, assessed the income of the deceased as unskilled worker @ Rs.5340/- per month,

deducted 50% of the income of the deceased towards personal expenditure, took dependency of the appellants/claimants (i.e. parents of the deceased) at 50%, applied multiplier of 11 and assessed total dependency of Rs.2670x12x11=Rs.3,52,440/- and thereafter by awarding Rs.2,00,000/- on account of loss of love and affection and Rs.25,000/- on account of transportation and last rites, awarded total compensation of Rs. 5,77,440/- along with interest @ 7.5% per annum.

[4] Learned counsel for the appellants contends that the deceased was a student of ITI, therefore, his income ought to have been assessed as a skilled worker, secondly, instead of deduction of 50% per month towards personal expenditure of the deceased, deduction ought to have been @1/3rd, thirdly, multiplier ought to have been applied as 18 instead of 11 in view of the age of the deceased being 20 years, andlastly, the appellants ought to have been awarded an amounton account of loss of estate, besides, filial consortium.

[5] Learned counsel for respondent No.3/Insurance Company on the other hand contends that the deceased was merely a student of ITI and not ITI qualified, therefore, the learned Tribunal rightly assessed the notional income of the deceased at Rs.5340/- as was applicable in the case of semi-skilled worker. Secondly, the monthly personal expenditure of the deceased had rightly been taken as 50% in view of 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 that compensation of Rs.2,00,000/- awarded on account of loss of love and affection was not maintainable in view of the decision of Hon'ble the Supreme Court in **Satinder Kaur @ Satwinder Kaur vs United India Insurance Co. Ltd Law Finder Doc Id #**

1729112wherein it has been held that loss of love and affection is comprehended in loss of consortium and there is no justification to award compensation towards loss of love and affection as a separate head.

[6] I have considered the submissions of learned counsel.

[7] Admittedly, the deceased was 20 years old and a student of ITI Diploma, therefore, the learned Tribunal rightly treated the deceased as a semi-skilled worker, consequently assessed the notional income of the deceased at Rs.5340/- i.e. as admissible in the case of semi-skilled worker. As regards the claim of the appellants that the deduction towards personal expenditure of the deceased ought to have been @ 1/3rd instead of 50%, the arguments is noted to be rejected in view of paragraph No.15 of the decision of Hon'ble the Supreme Court in Sarla Verma's case (Supra). Relevant extract of the same is reproduced as under:-

> *"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be*

> *considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."*

[8] Since the deceased was 20 years of age, therefore, in terms of paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra), 40% of the assessed income of the deceased was required to be taken into account towards future prospects for the purpose of working out the compensation payable. Likewise, as per paragraph No.61(viii) of the decision in Pranay Sethi's case (Supra), appellants are entitled to Rs.16,500/- on account of funeral expenses. The balance being towards transportation charges on account of expenses incurred for taking the victim to the hospital and thereafter for shifting his dead body, being reasonable is maintained. Consequently, compensation of Rs.25,000/- awarded (i.e. Rs.16,500/- on account of funeral expenses and Rs.8500/- on account of transportation charges), is maintained. No amount has been awarded on account of loss of estate as well as filial consortium. Accordingly, as per paragraph No.61(viii) of the decision in Pranay Sethi's case (Supra), appellants are held entitled to Rs.16,500/- on account of loss of estate, besides, Rs.44,000/- to each of the appellants/claimants on account of loss of filial consortium in terms of the decision in ***Magma General Insurance Company's case (Supra)***while in view of the decision in Satinder Kaur's case (Supra),

award of compensation towards loss of love and affection is held not admissible**.**

[9] 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.	Income of the deceased	Rs.5340/- per month	Rs.5340/- per month
2.	Future prospects	Nil	40% of Rs.5340/- = 2136 (Total 5340 + 2136 = Rs.7476/-)
3.	Dependency	50% of Rs.5340 = Rs.2670/-	50% of Rs.7476/- = Rs.3738/-
4.	Multiplier applied	11	18
5.	Compensation awarded	Rs.2670x12x11 = Rs.3,52,440/-	Rs.3738 x 12 x 18 = 8,07,408/-
6.	Funeral Expenses	Rs.25,000/-	Rs.25,000/- (i.e.Funeral expenses @Rs.16,500/- and transportation charges @ Rs.8500/-)
7.	Loss of estate	Nil	Rs.16,500/-
8.	Loss of love and affection	Rs.2,00,000/-	Nil
9.	Loss of Filial consortium	Nil	Rs.44000/- to each of the appellants/claimants i.e. (Rs. 44000/- x 2) = Rs.88000/-
10.	Interest	7.5% per annum	7.5 % per annum
Total		Rs.5,77,440/-	Rs.9,36,908/-

[10] Accordingly, in the light of the position noted above, the appeal is allowed,award is modified and as against compensation of Rs.5,77,440/- 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.9,36,908/- along with interest at the rate of 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

22.02.2023
'Amit'

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