

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-4240-2017 (O&M)
Date of decision: 17.02.2023

Jyoti & Others

...Appellant(s)

Vs.

Lakhvir Singh @ Pamma & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Munish Gupta, Advocate for the appellants.

Mr.R.K. Arya, Advocate for respondent No.1.

Mr. Sanjay Gupta, Advocate for respondent No.2.

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

Brigadier B.S. Taunque, Advocate for respondent No.6.

NIDHI GUPTA, J.

CM-14290-CII-2019

This is an application under Order 41 Rule 27 read with Section 151 CPC seeking permission to place on record application dated 30.05.2017 moved under RTI as Annexure A1 and reply to the same dated 07.06.2017 as Annexure A2 by way of additional evidence.

After going through the contents of the application, the same is allowed subject to all just exceptions, and Annexure A1 and Annexure A2 are taken on record.

MAIN CASE

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.26,85,080/- awarded by Motor

Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as “the learned Tribunal”) vide Award dated 04.01.2017 passed in MAC Petition No.102 dated 15.09.2014 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”). The claimants are the three major children of deceased-Sudesh Kumari.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Sudesh Kumari had died due to the injuries suffered by her in a motor vehicular accident that took place on 11.07.2014 due to the rash and negligent driving of bus bearing registration No.PB-07-W-5565 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1/driver, owned by respondent No.2 and insured by respondent No.3 herein. Learned Tribunal awarded compensation as noted above along with interest @ 7.5% per annum from the date of filing the petition till its actual realization.

3. Respondent No.3 was granted recovery rights against respondent No.2 on account of fact that offending vehicle was not having a valid Fitness Certificate at the time of accident. By separate order of even date, appeal filed by owner of offending vehicle/respondent No.2 has been allowed.

4. Learned counsel for the appellants seeks enhancement of compensation inter alia, on the ground;

a) that income of the deceased has been taken as only Rs.19,629/- per month as it was proven fact that deceased was working as Peon in Education Department. It is submitted that however, income as

assessed above, does not include the Family Pension that the deceased was receiving at time of death. It is stated that the learned Tribunal is in error in not taking into account the fact that deceased was also drawing family pension, and accordingly, income of deceased ought to have been assessed inclusive of family pension;

b) that nothing has been granted by way of consortium to the claimants;

c) that Rs.25,000/- is granted towards loss of estate whereas the same should be Rs.15,000/-;

d) that Rs.6,000/- has been granted towards funeral expenses which should be Rs.15,000/-;

e) that learned Tribunal directed that in case compensation amount is paid within three months from date of passing of order, Insurance Company will not be liable to pay interest on compensation amount. It is submitted that claimants be also granted interest from date of filing the claim petition till realization.

5. Per contra, it is submitted by learned counsel for respondent No.3 that in fact the impugned Award is on higher side as Rs.25,000/- has been granted towards loss of estate; and income of deceased has also been taken on higher side; and no ground for enhancement of compensation is made out.

6. I have heard learned counsel for the parties.

7. I do not find merit in the argument raised on behalf of appellants that family pension ought to have been included in monthly income of the deceased as admittedly, only the salary that was being drawn by the deceased can be considered as potential income. Even otherwise, claimants are major children of deceased and there is no evidence on record to show that they were dependent on income of deceased.

8. Submission of learned counsel for the appellants in respect of consortium is accepted and Rs.40,000/- each is granted to the appellants towards consortium. No doubt Rs.10,000/- extra has been granted by learned Tribunal towards loss of estate but same is offset against Rs.6,000/- which has been granted by learned Tribunal towards funeral expenses.

9. It is further held that appellants shall be entitled to 6% interest from date of filing the claim petition till realization on enhanced amount of compensation. Accordingly, compensation awarded to the appellants is re-worked as follows:-

Head	Awarded by MACT	Ought to be
Income	Rs.19,630/-	Rs.19,630/-
Annual income	Rs.2,35,560/-	Rs.2,35,560/-
30% increase towards future prospects	Rs.70,668/-	Rs.70,668/-
Net annual income	Rs.3,06,228/- (rounded off to Rs.3,06,240/-)	Rs.3,06,228/- (rounded off to Rs.3,06,240/-)
1/3 rd deduction	Rs.1,02,080/-	Rs.1,02,080/-
Annual loss of dependency	2,04,160/-	2,04,160/-
Multiplier	13	13
Loss of dependency	Rs.26,54,080/-	Rs.26,54,080/-
Loss of consortium		Rs.1,20,000/-
Loss of estate	Rs.25,000/-	Rs.15,000/-
Funeral expenses	Rs.6,000/-	Rs.15,000/-
Total compensation	Rs.26,85,080/-	Rs.28,04,080/-

10. Ratio of apportionment and manner of disbursement of compensation amount amongst the claimants as determined by learned Tribunal is maintained.

11. Present appeal is disposed of in above terms.

12. Pending application(s) if any also stand(s) disposed of.

17.02.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No