

(2016) 06 P&H CK 0079
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1970 of 2015 (O&M)

Kulwinder Kaur

APPELLANT

Vs

Narinder Singh

RESPONDENT

Date of Decision : 02-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 2 LAR 566

Hon'ble Judges : Darshan Singh, J.

Bench : Single Bench

Advocate : Mr. Neeraj Malhotra, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Darshan Singh, J. - The present appeal has been preferred against the award dated 24.09.2014, passed by learned Motor Accidents Claims Tribunal, Rupnagar (hereinafter called the "Tribunal"), vide which the appellants-claimants have been awarded compensation to the tune of Rs. 13,84,000/- along with interest at the rate of 9% per annum from the date of filing the claim petition till realisation on account of death of Onkar Singh in the motor vehicular accident, which took place on 26.08.2013.

2. The present appeal has been preferred by the appellants claimants for enhancement of the amount of compensation.

3. Notice to the appeal as well as application for additional evidence was issued to both the respondents. Respondents No.1 & 2 were duly served personally but none of them have come present, so they are proceeded against ex parte.

4. Along with the appeal, the appellants-claimants have also filed an application under Order 41, Rule 27 of Code of Civil Procedure, 1908 for leading the additional evidence to produce the copy of the passport and visa, copy of appointment letter and copy of the air ticket of the deceased to show that he was

working in Dubai and was earning Rs. 50,000/- per month.

5. Initiating the arguments, learned counsel for the appellants contended that deceased Onkar Singh was highly skilled person and was working as Fitter Reinforcement with A1 Jaber Energy Services LLC, Dubai and was earning Rs. 50,000/- per month. The learned Tribunal has taken the income of the deceased only to the tune of Rs. 8000/- per month. Even the minimum wages of the highly skilled person for the relevant period were Rs. 8956.75 per month. Thus, he contended that the learned Tribunal has taken the less income of the deceased. He further contended that the learned Tribunal has awarded inadequate amount towards the conventional heads. No amount has been awarded towards loss of love and affection to the parents and children. Thus, he contended that the learned Tribunal has not awarded the just compensation.

6. I have duly considered the aforesaid contentions.

7. Firstly, I take up the application moved by the appellants seeking permission to lead the additional evidence. The documents sought to be produced by the appellants in the additional evidence were already available with them at the time of leading their evidence before the learned Tribunal. The copy of appointment letter is not a document which is per se admissible. No cogent reason has been given as to why these documents were not produced before the Tribunal at the time of arguments. Thus, the appellants have not been able to make out the case for grant of permission to lead the additional evidence. So, the application CM No.6170-CII of 2015 stands dismissed.

8. The learned Tribunal has taken the income of the deceased to be Rs. 8000/- per month. Learned counsel for the appellants has pleaded that his income should be taken as per the minimum wages of a highly skilled worker. As per the Notification No. S.O. 94/C.A.11/1948/Ss.3 and 5/2012 dated 15.11.2012, issued by the Government of Punjab, Department of Labour (Labour Branch), the highly skilled worker means:-

(d) Highly skilled "Highly Skilled Work" means a work which calls for a degree of perfection and full competence in the performance of certain tasks including clerical work acquired through intensive technical or professional training or practical work experience for certain reasonable period and also requires of an worker to assume full responsibility for the judgement or decision involved in the execution of these tasks.

Or

A person who has been duly declared a graduate in Engineering or in any other special or other professional trade from a Govt. recognised institution, Board or University. Some of the commonly used designations of Highly skilled employees in various scheduled employments are as under:

Security Supervisor (who has obtained training as per syllabus approved by Department of Technical Education and Industrial Training vide their letter dated

6.8.2009), Graduate in any discipline or an under graduate with Diploma/ Certificate Course in Stenography or Diploma in Computer Applications/ Accountancy or Supervisory Staff who have to take independent decisions, Graduate Clerk, Sweeping machine operator or sewer man with two years experience; heavy vehicle drivers i.e. truck, tempo, tractor, bus, bulldozer, Crane operator, road rollers and. Harvester combine Operator, Loco shunt operator, Dozer operator, JCB operators, Radiographer, Assistant Ophthalmic Technician, Audiology Technician, Xray/ E.C.G./E.E.G., Pharmacist, Lady Health Visitor, Nursing Superintendent, Staff Nurse, Dietician, Medical Social Worker, Demonstrator, Deputy Chief Pharmacist, House Surgeon, Radiology Superintendent, Brick Layer, Stone Chistler, Water Pump Driver, Diesel/ Electric Mixer Driver, Plumber, Well Sinker, Plasterer etc.

9. The appellants-claimants have not led any evidence as to what was the qualification of the deceased. They have also not led any evidence about any technical or professional training or practical work experience gained by the deceased. Thus, in these circumstances he cannot be considered to be the highly skilled person. The learned Tribunal has taken the income of the deceased to be Rs. 8000/- per month, which is the minimum wages of a skilled worker. So, no fault can be found with the income of the deceased determined by the learned Tribunal.

10. The learned Tribunal has already awarded 50% of the future prospects to the income of the deceased. The total income of the deceased has been taken to be Rs. 12,000/- per month i.e. Rs. 1,44,000/- per annum. The learned Tribunal has deducted 3rd income of the deceased towards his personal and living expenses that is correct as the father of the deceased cannot be considered to be dependent upon the income of the deceased. So, the learned Tribunal has rightly determined the annual dependency of the claimants to be Rs. 96,000/-.

11. The learned Tribunal has applied the multiplier of 14. The age of the deceased was 32 years at the time of the accident. But as per the law laid down by the Hon'ble Apex Court in case Sarla Verma and others v. Delhi Transport Cooperation and another (2009) 6 SCC 121, keeping in view the age of the deceased i.e. 32 years, the multiplier of 16 should have been applicable. So, the amount of compensation on account of loss of dependency comes to Rs. 15,36,000/- (96,000 x 16).

12. Appellant-claimant No.1, the widow of deceased Onkar Singh has been awarded Rs. 25,000/- towards loss of consortium. Rs. 10,000/- have been awarded towards funeral expenses and Rs. 5000/- have been awarded towards transportation. No amount has been awarded by the learned Tribunal on account of loss of love and affection to the parents and children and less amount have been awarded towards loss of consortium and funeral expenses. Appellant-claimant No.1 Smt. Kulwinder Kaur, the widow of deceased Onkar Singh, shall be entitled to Rs. 1,00,000/- on account of loss of consortium. Dilpreet Singh, the minor son of deceased, shall also be entitled of Rs. 1,00,000/- on account of loss

of love, care and guidance. Mohinder Kaur, the mother of the deceased shall also be entitled to Rs. 1,00,000/- on account of loss of love and affection of her son. The appellants-claimants shall also be entitled to a sum of Rs. 25,000/- towards funeral and transportation expenses. Thus, the total amount of compensation comes to Rs. 18,61,000/-.

13. Thus, keeping in view my aforesaid discussion, the present appeal is hereby allowed. The amount of compensation is enhanced to Rs. 18,61,000/- from Rs. 13,84,000/- as awarded by the learned Tribunal. The appellants-claimants shall also be entitled to interest at the rate as determined by the learned Tribunal on the enhanced amount from the date of filing the petition till realisation. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.