(2015) 09 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 4578 of 2011 (O&M)

Parveen Kumari and Others APPELLANT

Vs

Ram Sahai and Others RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Citation : (2015) 09 P&H CK 0064

Hon'ble Judges : Surinder Gupta, J

Bench : Single Bench

Advocate : Manjuli Joshi, for the Appellant

Final Decision : Allowed

Judgement

Surinder Gupta, J—This is an appeal against the award dated 04.02.2011 passed by Motor Accident Claims Tribunal, Jalandhar (later referred to as the Tribunal), whereby compensation of Rs. 4,23,100/- was allowed for the death of Rajesh Kumar Chadha (later referred to as the deceased) son of claimant No. 1 Parveen Kumari and brother of claimant No. 2 Aarti, who died in a motor accident with tractor-trolley bearing registration No.PB-08-BC-5359 (later referred to as the offending vehicle).

2. The case of the claimants, in brief, is that on 01.02.2009, deceased, who was employed with Diamond Silk Store, Chowk Rainak Bazar, Jalandhar as salesman, was returning home, after finishing his job, on motorcycle Pulsar bearing registration No.PB-08-AX-8503. When he reached near Football Chowk, the offending vehicle, which was being driven by respondent No. 1 Ram Sahai, hit the motorcycle of the deceased from back side. Rajesh fell down on the road and tyre of the offending vehicle crushed his head causing serious injuries. One Lalit Jairath (PW2) was coming behind the deceased who took him to Satyam Hospital, where he died. FIR No. 18 dated 02.02.2009 was registered at Police Station Division No. 2, Jalandhar regarding this accident.

3. On notice, respondents No. 1 and 2, driver and owner of the offending vehicle

filed written statement, denying that the accident had taken place due to the fault of respondent No. 1.

4. Respondent No. 3-New India Assurance Company Limited i.e. insurer of the offending vehicle also denied the accident and took the plea that in case, the accident is proved, the same had taken place due to rash and negligent driving of motorcycle by the deceased himself.

5. Pleading of the parties led to the framing of issues as follows:-

(1) Whether Rajesh Kumar Chadha died in a motor vehicle accident on 1.2.2009 due to the rash and negligent driving of Ram Sahai while driving the tractor No.PB-08-BC-5359? OPP

(2) Whether the respondent No. 1 was not holding a valid and effective driving licence? OPP

(3) Whether the vehicle was not having fitness certificate at the time of accident? OPR No. 3

(4) Whether the respondent has made the breach of the terms and conditions of the insurance policy? OPR

(5) Whether the claimants are entitled to compensation, if so to what extent and from whom? OPP

(6) Relief.

6. While recording finding on issue No. 1, 4 and 5, the Tribunal concluded that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No. 1. The income of the deceased was notionally assessed as Rs. 3,000/- per month. Keeping in view the age of the deceased as 29 years, multiplier of 16 was applied while calculating the amount of dependency as Rs. 3,84,000/- to which Rs. 5,000/- was added towards loss of consortium and Rs. 2,000/- towards funeral expenses. The claimants were also allowed the medical expenses proved on file as Rs. 32,100/-. The total compensation was allowed to the claimants to the tune of Rs. 4,23,100/-.

7. Learned counsel for the appellants-claimants has argued that the Tribunal has not allowed any compensation towards future prospects. Keeping in view the age of the deceased, which was 29 years, addition of 50% was required to be made in the income of the deceased towards future prospects. She has placed reliance in case of Munna Lal Jain and Others Vs. Vipin Kumar Sharma and Others(2015) 2 ACC 806 : (2015) ACJ 1985 : (2015) 7 AD (SC) 185 : (2015) 4 ALD 114 : (2015) 4 ALLMR 436 : (2015) 4 BomCR 72 : (2015) 3 CGLJ 93 : (2015) 3 RCR(Civil) 447 : (2015) 3 RLW 2021 : (2015) 6 SCALE 522 : (2015) 6 SCC 347 : (2015) 2 WLN 113 and Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 . She has further argued that as per the observations in

case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , the Tribunal was required to apply multiplier of 17 instead of 16, as applied in this case while computing the amount of compensation. The Tribunal has allowed a sum of Rs. 2,000/- towards funeral expenses while as per the observations in case of Rajesh and others Vs. Rajbir and others (supra); Vimal Kanwar and Others Vs. Kishore Dan and Others, (2013) 2 ACC 752 : (2013) ACJ 1441 : (2013) 6 AD 568 : AIR 2013 SC 3830 : (2013) 259 CTR 420 : (2013) 8 JT 234 : (2013) 171 PLR 776 : (2013) 2 RCR(Civil) 945 : (2013) 6 SCALE 705 : (2013) 7 SCC 476 : (2013) 7 SCC(L&S) 759 : (2013) 216 TAXMAN 300 ; and Smt. Savita Vs. Bindar Singh and Others, (2014) ACJ 1261 : (2014) AIRSCW 2053 : (2014) 8 JT 605 : (2014) 4 SCALE 128 : (2014) 4 SCC 505 , an amount of Rs. 25,000/- was required to be allowed towards funeral expenses. The Tribunal has allowed Rs. 5,000/- towards loss of consortium while no amount has been allowed to the claimants towards loss of love and affection and loss to the estate.

8. Learned counsel for the appellants-claimants has further argued that deceased was married with Sakshi, respondent No. 4, who after his death, had remarried but still the Tribunal has given major share of compensation to her. The appellants, who are mother and sister of the deceased, were wholly dependant on his income as husband of appellant No. 1 and father of appellant No. 2 had already died. The Tribunal had allowed period of two months to the insurance company to make the payment of compensation amount without any interest and on the failure of the insurance company, the interest was allowed @ 6% per annum only, which is required to be revised to 9% per annum.

9. Learned counsel for respondent No. 3-insurance company has argued that income of the deceased was rightly assessed by the Tribunal. So far as the addition of future prospects is concerned, the matter is still pending before the larger Bench of the Hon''ble Apex Court as per the reference made in National Insurance Company Limited Vs. Pushpa Appeal(C) No. 8058 of 2014 decided on 02.07.2014 (National Insurance Co. Ltd. Vs. Pushpa . She has, however, not disputed that the multiplier of 17 is attracted to this case and the same could be applied. The deceased had left behind wife, mother and sister and as such, the Tribunal has rightly deducted 1/3rd of the income towards personal expenses of the deceased.

10. The appellants have sought enhancement of compensation on following points:-

(i) future prospects;

(ii) multiplier applied by the Tribunal as 16 is required to be revised to 17.

(iii) enhancement of compensation towards funeral expenses;

(iv) grant of compensation for loss of love and affection and loss to the estate;

(v) apportionment of the compensation between the appellants and respondent No. 4 (wife of deceased).

11. The age of the deceased was 29 years at the time of accident. As per the claimants, he was employed with Diamond Silk Store, Chowk Rainak Bazar, Jalandhar as salesman and was getting Rs. 13,000/- per month as salary but the appellants-claimants failed to produce any evidence in this regard. Perusal of the impugned award shows that in the absence of any evidence, the Tribunal has notionally assessed the income of the deceased as Rs. 3,000/- per month.

12. In the case of National Insurance Company Limited Vs. Pushpa (supra), while differing with the view taken in case of Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (supra), it was observed as follows:-

"18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

13. In case of Rajesh and others Vs. Rajbir and others (supra), a three Judges Bench of Hon''ble Apex Court has observed in para 11 and 12 as follows:-

"11. Since, the Court in Santosh Devi''s case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma''s case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

12. In Sarla Verma''s case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self- employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter. "

Reference was made to a larger Bench of Hon''ble Apex Court in case of National Insurance Company Limited Vs. Pushpa (supra), on 02.07.2014. In the recent judgment dated May 15, 2015 in case titled Munna Lal Jain and others Vs. Vipin Kumar Sharma and others (supra), a three Judges Bench of Hon''ble Apex Court allowed addition towards future prospects in the case of self-employed persons following the observations made in case of Rajesh and others Vs. Rajbir and others (supra). As the view taken in case of Rajesh and others Vs. Rajbir and others (supra) has been followed by the Hon''ble Apex Court in Munna Lal Jain and others Vs. Vipin Kumar Sharma and others (supra), a sum equal to 50% is to be added in the income of the deceased towards future prospects.

14. The deceased had left behind his wife, mother and sister, as such, deduction of 1/3rd towards personal expenses of the deceased as applied by the Tribunal is approved. As held in the case of Sarla Verma Vs. Delhi Transport Corporation and Anr.(supra), the multiplier of 17 is required to be applied in the instant case as the deceased was 29 years of age at the time of his death. The claimants are also entitled to funeral expenses to the tune of Rs. 25,000/- and a sum of Rs. 1 lac for loss of love and affection as per the observation in case Rajesh and others Vs. Rajbir and others (supra).

15. In view of my above discussion, the amount of compensation to which the claimants are entitled is calculated as per the following table:-

16. This appeal has merits and is accepted. The amount of compensation to which the appellants/claimants are entitled to is enhanced from Rs. 4,23,100/- as awarded by the Tribunal to Rs. 7,74,100/-. It is evident that father of the deceased had already expired and claimants Parveen Kumari and Aarti were dependant on the income of the deceased, as such, the enhanced compensation shall be apportioned in equal shares by appellants and wife of deceased. The claimants are also allowed interest on the amount of compensation @ 7.5% per annum from the date of filing of the claim petition till the date of actual realization. The amount of compensation already paid/deposited, shall be deducted out of the total compensation allowed. The appellants shall also be entitled to the costs of appeal. Counsel fee is assessed as Rs. 20,000/-.

