(2016) 03 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : FAO No. 381 of 2012

Rita Mohil and Ors. — APPELLANT

Vs

Imran Khan and Anr. — RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2016) AAC 1099 : (2017) 2 ACC 245 : (2017) ACJ 304 : (2016) 2 HimLR 1161 : (2016) ILRHP 397

Hon'ble Judges : Mansoor Ahmad Mir, C.J.

Bench : Single Bench

Advocate : Rupinder Singh, Advocate, for the Appellant; Vishal Bindra, Advocate, P.S. Chandel, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Mansoor Ahmad Mir, C.J. (Oral) - Appellants-claimants, being the victims of motor vehicular accident, have invoked the jurisdiction of this Court under Section 173 of the Motor Vehicles Act, 1988 (for short "the MV Act") and prayed for enhancement of compensation on the grounds taken in the memo of appeal.

2. Subject matter of this appeal is the award dated 12th March, 2012, made by the Motor Accident Claims Tribunal-1, Sirmaur, District at Nahan, H.P., (hereinafter referred to as ''the Tribunal'') in M.A.C. Petition No. 40-MAC/2 of 2010, titled Smt. Rita Mohil and others v. Shri Imran Kahan and another, whereby compensation to the tune of Rs. 12,23,720/- with interest @ 7.5% per annum from the date of filing of the claim petition, came to be awarded in favour of the claimants-appellants herein and the insurer-the Oriental Insurance Company-respondent No. 2 herein, was saddled with the liability, (hereinafter referred to as ''the impugned award'').

3. The insurer and the insured-owner have not questioned the impugned award on any count, thus has attained finality so far it relates to them.

4. Thus, the only question to be determined in this appeal is-whether the amount awarded is inadequate? The answer is in affirmative for the following reasons.

5. The claimants had filed the claim petition before the Tribunal, for grant of compensation to the tune of Rs. 30.00 lacs, as per the break-ups given in the claim petition.

6. It is specifically averred in the claim petition that the deceased Shri Sandeep Mohil became the victim of vehicular accident on 15.6.2010 and was taken to the hospital where he succumbed to the injuries. F.I.R No. 130 of 2010, under Sections 279, 304 A of the Indian Penal Code, Police Station, Nahan, was lodged against the driver of the offending vehicle-bus bearing registration No. HP-02-7786. It is further pleaded in the claim petition that the deceased was a JBT teacher and was likely to be promoted as TGT, details of which are given in para- 22 of the claim petition.

7. The claimants have placed on record salary certificate Ext. PW-2/A, which does disclose that the last pay drawn by the deceased was Rs. 17,977/- and the age of the deceased was 35 years at the time of the accident, as the accident had taken place on 15.06.2010 and his date of birth is recorded in his service book (Ext. PW-2/B) as 13.06.1975.

8. It is held that the monthly salary/income of the deceased was Rs. 17,977/-. ? rd was to be deducted towards personal expenses of the deceased in view of the ratio laid down by the Apex Court in case tilted as Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, reported in AIR 2009 SC 3104, upheld by a larger Bench of the Apex Court in a case titled as Reshma Kumari and others v. Madan Mohan and another, reported in 2013 AIR (SCW) 3120 read with the judgment rendered by the Apex Court in case titled as Munna Lal Jain and another v. Vipin Kumar Sharma and others, reported in 2015 AIR SCW 3105. Thus it can safely be held that the claimants have lost source of dependency to the tune of Rs. 11984/-, roughly Rs. 12,000/- per month.

9. The Tribunal has also fallen in error in applying the multiplier of ''7'' in view of the age of the deceased. The age of the deceased was 35 years at the time of the accident and the multiplier of ''16'' was applicable in this case in view of Schedule II appended to the MV Act read with the ratio laid down by the Apex Court in Sarla Verma, Reshma Kumari and Munna Lal Jain''s cases, supra.

10. Accordingly, it is held that the claimants are entitled to compensation to the tune of Rs. 12,000/- x 12 = Rs. 1,44,000/- x 16 = Rs. 23,04,000/- under the head ''loss of dependency''.

11. The Tribunal has also fallen in an error in awarding Rs. 20,000/- under various heads, which is not legally correct. In view of the recent judgment of the Apex Court, a sum of Rs. 10,000/- each is awarded in favour of the claimants, under the heads ''loss of love and affection'', ''loss of consortium'', ''loss of estate'', and ''funeral expenses.

12. Viewed thus, the claimants are held entitled to the total amount of compensation to the tune of Rs. 23,04,000/- + Rs. 40,000/- = Rs. 23,44,000/- along with interest as awarded by the Tribunal.

13. Accordingly, the amount of compensation is enhanced. The insurer is directed to deposit the entire award amount, minus the amount if already deposited or paid, before the Registry of this Court within eight weeks from today. On deposit, the same be released in favour of the claimants, strictly as per the terms and conditions contained in the impugned award, through payees'' account cheque or by paying the same in their accounts.

14. Accordingly, the impugned award is modified, as indicated above and the appeal is disposed of.

15. Send down the record after placing copy of the judgment on the Tribunal''s file.

