(2018) 12 P&H CK 0147

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 2375, 2376, 2377 Of 2001

Sangeeta Rani & Others — APPELLANT

Vs

State Of Haryana & Others — RESPONDENT

Date of Decision : 13-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 427
Motor Vehicles Act, 1988 — Section 166

Citation : (2018) 12 P&H CK 0147

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Ashwani Talwar, Vishal Kashyap

Final Decision : Disposed off

Judgement

Avneesh Jhingan, J.

All the aforesaid appeals are being disposed of by a common order as they arise out of a common award dated 02.03.2001 passed by the Motor Accident Claims Tribunal, Sirsa (for brevity 'the Tribunal') in Claim Petitions No. 19, 20 and 23 of 1998.

The State of Haryana, owner of bus bearing registration No. HR-22-PA-0202 (hereinafter referred to as 'offending vehicle') i.e. General Manager, Haryana Roadway, Fatehabad depot and the driver of offending vehicle have been arrayed as respondents No.1 to 3 respectively in all the three appeals.

To avoid repetition, the facts are taken from FAO No. 2375 of 2001. On 20.02.1998, Ashwani Kumar aged 36 years, Narinder Kumar aged 45 years and Jamna Devi aged 60 years were travelling in a car bearing registration No. HR-24-A-0569. The car was being driven by Ashwani Kumar. On their way the car was hit by a rashly and negligently driven offending vehicle, as a result of the accident all the three occupants of the car suffered injuries and died at the spot. FIR No. 72, dated 20.02.1998, under Sections 279, 427 and 304-A of the Indian

Penal Code, 1860 was registered at Police Station Ding. The legal heirs of Ashwani Kuamr (deceased), Narinder Kumar (deceased) and Jamna Devi (deceased) filed three separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act') before the Tribunal.

The Tribunal after considering the facts and appreciating the evidence adduced, held that the accident was caused due to the rash and negligent driving of the offending vehicle. Respondents No.1 to 3 (in appeal) were held jointly and severally liable to pay the compensation. The Tribunal awarded a compensation to the tune of Rs.4,30,000/- to the legal heirs of Narinder Kumar (deceased), Rs.9,10,000/- to the legal heirs of Ashwani Kumar (deceased) and Rs.70,000/- to the legal heirs of Jamna Devi (deceased) alongwith interest @9% per annum in all the claim petitions.

The widow, two minor daughter and a major son of Narinder Kumar (deceased) filed a claim petition bearing No. 19 of 1998. The claimants pleaded that the age of the deceased was 45 years old and as per the income tax return, the Tribunal assessed the annual income of the deceased as Rs.45,000/-. Multiplier of 14 was applied and 1/3rd deduction was made for self expenses.

The amount awarded included Rs.10,000/- for funeral expenses.

Learned counsel for the appellants contends that no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side.

In view of the decision of the Supreme Court in National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009, learned State counsel could not raise any serious objection to the contention raised by learned counsel for the appellants,

The contentions raised by learned counsel for the appellants deserve acceptance.

Having due regard to the decision of the Supreme Court in Pranay Sethi's case (supra); 25% future prospects are awarded. Claimants are also entitled to an amount of Rs.15,000/- each for funeral expenses and loss of estate and another sum of Rs.40,000/- is awarded to the widow for loss of consortium.

There is no dispute with regard to the loss of dependency calculated by the Tribunal i.e. Rs.4,30,000/-. 25% of the said amount is awarded for future prospects i.e. Rs.1,05,000/-. The amounts awarded under the conventional heads are enhanced by Rs.60,000/-

The awarded dated 02.03.2001 is modified to the extent that the amount awarded of Rs.4,30,000/- is enhanced by Rs.1,65,000/-. The claimants/ appellants shall be entitled to interest on the enhanced amount as awarded by the Tribunal.

The widow, two minor sons and parents of Ashwani Kumar (deceased) filed a claim petition bearing No.20 of 1998 under Section 166 of the Act.

It was claimed that the age of the deceased was 36 years at the time of accident and was doing business and agriculture work. Relying upon the income tax return for the assessment year 1997-1998, the Tribunal assessed the annual income of the deceased as Rs.90,000/-. 1/3rd deduction for self-expenses was made and multiplier of 15 was applied. The amount awarded included Rs.10,000/- for funeral expenses and loss of consortium.

Learned counsel for the appellants contends that no future prospects have been awarded and the Tribunal erred in making 1/3rd deduction for self expenses as the deceased was survived by four dependants. He further contends that the amount awarded for conventional heads is on lower side.

In view of the decisions of the Supreme Court in Pranay Sethi's case (supra) and Smt. Sarla Verma and others vs. Delhi Transport Corporation and another; (2009) 6 SCC 121, learned State counsel could not raise any serious objections to the contentions raised by learned counsel for the appellants,

The contention raised by learned counsel for the appellants deserves acceptance.

The deceased was 36 years old and was self-employed, hence, 40% future prospects are awarded in view of Pranay Sethi's case (supra). Claimants are also entitled to an amount of Rs.15,000/- each for funeral expenses and loss of estate and another sum of Rs.40,000/- is awarded to the widow for loss of consortium. The deceased was survived by the widow, two minor children and parents. In consonance with the decision of the Supreme Court in Smt. Sarla Verma's case (supra), 1/4th deduction for self-expenses is made.

In view of above, the compensation is recalculated as under:

Head

Compensation awarded

(i)

Annual Income

Rs.90,000/-

(ii)

Future prospects at 40%

Rs.36,000/-

(iii)

Annual Income

Rs.1,26,000/-

(iv)

Deduction for self-expenses

Rs.31,500/- (i.e. 1/4th of total income)

(v)

Multiplier

15 (as per age of deceased)

(vi)

Total Dependency

Rs.94,500x15=Rs.14,17,500/-

(vii)

Funeral expenses

Rs.15,000/-

(viii)

Loss of estate

Rs.15,000/-

(ix)

Loss of Consortium

Rs.40,000/-

Total Compensation awarded

Rs.14,77,500/-

The award dated 02.03.2001 is modified to the extent that the amount awarded of Rs.9,10,000/- is enhanced to Rs.14,77,500/- and the claimants/appellants shall be entitled to interest on the enhanced amount as awarded by the Tribunal.

The husband and three major daughters of Jamna Devi (deceased) filed a claim petition bearing No. 23 of 1998 seeking compensation under Section 166 of the Act.

It was claimed that the age of the deceased was 60 years at the time of accident and was house wife. The Tribunal assessed her notional income as Rs.1200/- per month and multiplier of 5 was applied. The amount awarded included Rs.10,000/- for funeral expenses and loss of consortium.

Learned counsel for the appellants contends that the amounts awarded under the conventional heads are on the lower side. He further contended that the Tribunal erred in assessing the monthly income of the deceased, she was a house maker, at least the Tribunal should have treated her as an unskilled labourer.

Learned State counsel defended the award and argued that the deceased was only a house wife, there is no proof of her earnings, in such circumstances the Tribunal has rightly assessed her notional income as Rs.1200/-per month.

The contentions raised by learned counsel for the appellants deserve acceptance.

The Apex Court in Jitendra Khimshankar Trivedi and others vs. Kasam Daud Kumbhar and others; 2015 (4) SCC 237, has held as under:

"Even assuming Jayvantiben Jitendra Trivedi was not self- employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A house-wife/ home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

Since the contribution of a house wife cannot be under estimated and it is very difficult to equate her contribution in monetary terms, it would not be appropriate to equate a house maker with an unskilled labourer, as her dedication and devotion towards family is unmatchable. The minimum wages prevalent in the State of Haryana for an unskilled labourer at the time of accident was Rs.2898/-, notional income of deceased is taken as Rs. 3000/- per month. The deceased was 60 years of age and multiplier of 9 is to be applied in consonance with the judgment of the Supreme Court in Sarla Verma's case (supra).

In case where the notional income of the house-wife is considered, no deduction for self-expenses is to be made. This Court relying upon a decision of the Apex Court in case of Arun Kumar Aggarwal and another Versus National Insurance Company and others; (2010-3) 159 PLR 428 (SC) in Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others,

Vol. CLXXII (2013-4) 329, has held as under:

''15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted.''

In view of Apex Court judgment rendered in the case of Pranay Sethi's case (supra), claimants are entitled to an amount of Rs.70,000/- under the Conventional Heads i.e. Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate and Rs.40,000/- for loss of consortium.

In view of above discussion, the compensation is recalculated as under:

Monthly Income

Rs.3000/-

Annual notional Income

Rs.36,000/-

Applying multiplier of '9'

Rs.3,24,000/-

Funeral Expenses

Rs.15,000/-

Loss of estate

Rs.15,000

Loss of Consortium

Rs.40,000/-

Total

Rs.3,94,000/-

The award dated 02.03.2001 is modified to the extent that amount awarded of Rs.70,000/- is enhanced to Rs.3,94,000/-. The appellants shall be entitled to enhanced amount alongwith interest as awarded by the Tribunal from the date of filing of the claim petition till realization of amount.

The appeals stand disposed of in the above terms.

