(2019) 01 P&H CK 0324

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 5394 Of 2015(O&M)

Suresh Devi APPELLANT

Vs

Girender Singh And Another RESPONDENT

Date of Decision : 08-01-2019

Acts Referred:

Citation : (2019) 01 P&H CK 0324

Hon'ble Judges : Raj Mohan Singh, J

Bench : Single Bench

Advocate : N.S. Bhardwaj, Sharad Chaudhary, Harsh Aggarwal

Final Decision : Disposed Off

Judgement

Raj Mohan Singh, J

[1]. This appeal has been preferred by mother of the deceased Sonu who died in a vehicular accident for enhancement of compensation against the award dated 31.03.2015 passed by Motor Accident Claims Tribunal, Bhiwani (for short 'The Tribunal').

[2]. The accident took place on 24.02.2014 when Sonu and Sandeep were travelling on a motorcycle bearing No.HR14D/7862. The accident took place when they were going to ATM for taking out the money. The motorcycle was being driven by Sonu and Sandeep was the pillion rider. When they reached near police station Sadar, Dadri, Rohtak road, in the meantime, offending motorcycle being driven by respondent No.1 came in a rash and negligent manner and hit the motorcycle of the deceased. Due to heavy impact, Sonu received grievous injuries on his head and other parts of the body. Respondent No.1 fled away from the spot after the accident.

[3]. FIR was registered on the basis of statement of Sandeep. Sonu was admitted to General Hospital, Charkhi Dadri. He was referred to PGIMS Rohtak and from there, he was further referred to Fortis Hospital, Shalimar Bag, New

Delhi. He remained hospitalized till 26.02.2014, but his condition deteriorated and he succumbed due to the injuries on 26.02.2014.

[4]. The claimants filed claim petition seeking compensation under different heads. Sonu was serving in Delhi Police as Constable and was getting Rs.21,752/- as salary. Claimants pleaded that the deceased was having agricultural income to the tune of Rs.2,00,000/- per annum. Parents and brother of the deceased were the claimants before the Tribunal.

[5]. The Tribunal held that the accident in question took place due to rash and negligent driving of respondent No.1. Respondent No.2/Insurance Company could not rebut the evidence led by the driver of the offending vehicle which was duly insured with the Insurance Company for the relevant period. Respondent No.1 was having valid driving licence which was effective on the date of accident and there was no violation of terms and conditions of the Insurance policy. The deceased was getting Rs.24,016/- per month as his salary. Appellant is getting Rs.3500/- per month as family pension and the said amount was deducted from monthly income of the deceased.

[6]. The Tribunal assessed the monthly income of the deceased to be Rs.20,516/- after deducting Rs.3500/- towards family pension from total salary of Rs.24,016/-. PW 4 Devender Kumar proved the medical bill of Fortis Hospital, New Delhi amounting to Rs.79,084.53 including admission charges, blood bank, diagnostic, doctor charges, donations, drugs, equipment charges, investigations, room rents etc. and the said amount was awarded as compensation on account of medical treatment of the deceased in favour of the claimants. Sonu was 25 years of age and was unmarried. Father and brother of the deceased were not held to be dependent on the income of the deceased, therefore, mother of the deceased was taken to be dependent on the income of the deceased. In view of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77 (SC), deduction towards personal expenses were made to the tune of half, therefore, dependency of the mother was calculated as Rs.10,258/-. On the basis of aforesaid monthly dependency in favour of the mother, future prospects to the tune of 50% i.e. Rs.5129/- was added and monthly income of the deceased was assessed to be Rs.15,387/- i.e. Rs.1,84,644/- per annum. Keeping in view the age of the deceased to be 25 years, multiplier of 18 was applied thereby assessing an amount of Rs.33,23,592/- to which an amount of Rs.79,084.53 towards medical expenses was added. An amount of Rs.25,000/- towards transportation and last rites was also added and total compensation was assessed to be Rs.34,27,676.53 in favour of the appellant along with interest @ 6% per annum from the date of filing of the claim petition till final realisation of the amount.

[7]. During course of arguments, learned counsel for the appellant submitted that only grievance of the appellant is that the amount of family pension should not have been deducted from the monthly income of the deceased and for all intents and purposes, the monthly salary of the deceased i.e. Rs.24,016/-should

have been taken into consideration while computing the payable amount of compensation in favour of the appellant. Learned counsel relied upon Smt. Gurdev Kaur and others Vs. Jharmal Singh and another, 2017(3) PLR 8 and Sebastiani Lakra and others Vs. National Insurance Company Ltd. and another, 2018 AIR (SC) 5034 and contended that family pension being received by the mother cannot be deducted from the income of the deceased for the purposes of computation of compensation payable to the appellant. Pecuniary advantages received by heirs cannot be deducted from the amount of compensation either on account of insurance or on account of pensionary benefits or gratuity or grant of employment to a kin of deceased. These amounts are earned by deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to dependents or legal heirs of deceased on account of his death in the vehicular accident.

[8]. In view of aforesaid legal position, income of the deceased has to be taken to be Rs.24,016/- for all intents and purposes. Since the deceased was unmarried, therefore, deduction to the tune of 50% has to be applied towards personal expenses and the monthly income of the deceased could be assessed as Rs.12,008/-. Since the Tribunal has added future prospects to the tune of 50% of the monthly income, therefore, the same amount has to be added and the same would enhance the monthly income of the deceased to the tune of Rs.18,012/- i.e. Rs.2,16,144/- per annum (18,012 X 12 =2,16,144). Keeping in view the age of the deceased and in view of Smt. Sarla Verma's case (supra), multiplier of 18 has to be applied and after applying the same, the amount of compensation would come out to be Rs.38,90,592/-(2,16,144X18=38,90,592). An amount of Rs.79,084.53 towards medical expenses has to be added to the aforesaid tally besides adding an amount of Rs.25,000/- towards transportation and last rites of the deceased. In this manner, total amount of compensation would come out to be Rs.39,94,676.53 (38,90,592+79,084.53+25,000=39,94,676.53). The Tribunal has already awarded an amount of Rs.34,27,676.53, therefore the said amount has to be deducted from the total compensation and after deducting the same, enhanced amount of compensation would come out to be Rs.5,67,000/- (39,94,676.53-34,27,676.53=5,67,000).

[9]. The enhanced amount of compensation i.e. Rs.5,67,000/- shall carry interest @ 7.5% per annum from the date of filing of the claim petition till final realisation of the amount. The liability to pay the enhanced amount shall remain the same as ordered by the Tribunal.

[10]. With the aforesaid modification, the present appeal stands disposed of.