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High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 6518 of 2010

Smt. Nirmal Kaur and Others	APPELLANT
Vs	
S. Gurdip Singh and Others	RESPONDENT

Date of Decision: Oct. 3, 2012

Hon'ble Judges: M. Jeyapaul, J

Bench: Single Bench

Advocate: Sudhir Paruthi, for the Appellant; Amandeep Soni, Advocate for Respondents No. 1 to 3 and Mr. R.C. Gupta, Advocate and Mr. Paul S. Saini, Advocate, for the Respondent

Judgement

M. Jeyapaul, J.
The widow, two sons and two daughters of deceased Mehar Chand aged 55 years at the time of accident have come forward with the present appeal seeking enhancement of compensation. Deceased Mehar Chand was 55 years old at the time of accident. He was a paint contractor and was earning a sum of Rs. 4500/- per month. He has left behind his wife, two sons, aged 25 years and 19 years respectively and two daughters, aged 26 years and 22 years respectively. The Tribunal deducted 1/3rd of the income arrived at towards personal living expenses of deceased Mehar Chand. The Tribunal also adopted "8" as multiplier. Nothing was awarded towards future prospects, loss of estate and loss of consortium of the first appellant.

2. Learned counsel appearing for the appellants referring to the decision of the Hon''ble Supreme Court in New India Assurance Co. Ltd. vs. Gopali and others, 2012 (3) RCR (Civil) 818 would submit that only 1/10th of the salary should have been deducted towards personal expenses of deceased Mehar Chand where the claimants were 5 or more. He would also submit that the Tribunal committed error in adopting "8" as multiplier. Towards future prospects, loss of estate and loss of consortium, the appellants are entitled to compensation, it is further submitted.

3. Learned counsel appearing for respondent No. 4- insurance company would submit that the decision cited by the learned counsel appearing for the appellant is distinguishable, inasmuch as in the instant case, there is evidence to show that the family had other source of income and all the sons and daughters have attained majority.

4. In the aforesaid case in New India Assurance Co. Ltd. vs. Gopali and others, the Hon"ble Supreme Court made an observation that in a case where the family of the deceased comprised of 5 persons or more, having an income of Rs. 3000/- to Rs. 5000/-, it is virtually impossible for the deceased to spend more than 1/10th of the total income upon himself.

5. As rightly pointed out by learned counsel appearing for the 4th respondent, on facts the present case is found to be slightly different. PW 1 has categorically admitted that the family has other source of income also. It is on record that claimant Pawan Kumar was aged 25 years and claimant Suman Bala was aged 26 years. Of course, the other sons Sunil Kumar was aged 19 years and other daughter Anu Bala was aged 22 years. The claimants Sunil Kumar and Anu Bala might have fully depended on the income of the deceased, but in my considered view, Pawan Kumar and Suman Bala in the age group of 25-26 years would not have fully depended upon the sole income of the deceased. Therefore, in my considered view, instead of 1/3rd, it would be justifiable to deduct 1/5th from the income of the deceased towards personal living expenses.

6. As per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Tribunal should have adopted "11" as multiplier instead of "8", when the Tribunal has arrived at a conclusion that the deceased was 55 years of age at the time of accident.

7. Towards future prospects, it appears that the Tribunal has not awarded any amount. At least 1/3rd of the income should have been added to the monthly income of the deceased towards future prospects. Further, towards loss of estate, a sum of Rs. 5000/- and towards loss of consortium, a sum of Rs. 10,000/- also will have to be awarded in this case.

8. In view of the above, a sum of Rs. Rs. 6,33,600/- (4500 + 1/3rd there of being Rs. 1500 = Rs. 6000-1/5th there of being Rs. 1200 = Rs. 4800 x 12 = Rs. 57,600 x 11 = Rs. 6,33,600/-) towards loss of dependency, Rs. 5000/- towards loss of estate, Rs. 10,000/- towards loss of consortium, apart from a sum of Rs. 7000/- already awarded by the Tribunal towards funeral expenses is awarded as compensation with interest @ 7.5% on the enhanced compensation of Rs. 3,53,600/-. With the above modification in the quantum of compensation, the appeal is partly allowed.