

(2014) 03 P&H CK 0070

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 425 of 1996 (O and M)

Nirmal Kaur

APPELLANT

Vs

Krishan Singh

RESPONDENT

Date of Decision: March 19, 2014

Citation: (2014) 4 RCR(Civil) 50

Hon'ble Judges: Jitendra Chauhan, J

Bench: Single Bench

Advocate: Jagdish Marwaha, Advocate for the Appellant; M.S. Kang and Ekta Thakur and Neeraj Khanna, Advocate for the Respondent

Final Decision: Allowed

Judgement

Jitendra Chauhan, J.

This is claimants' appeal seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Chandigarh, ("the Tribunal", for brevity) vide impugned award dated 01.04.1995. The learned counsel for the appellant submits that the deceased was running a factory in the name and style of M/s. HK Enterprises, and supplying parts to Swaraj Tractors, which deducted Income Tax at source. Therefore, the learned Tribunal has erred in assessing the income of the deceased at Rs. 3,000/- per month. It is further argued that the multiplier has also been wrongly applied. Nothing has been awarded for future prospects. The learned counsel lastly argued that the compensation awarded under the other heads is also inadequate.

2. On the other hand, the learned counsel for the respondent-Insurance Company has vehemently argued that in the absence of any cogent evidence with regard to the income of the deceased, the same has been rightly assessed by the learned Tribunal. The amount of compensation awarded by the learned Tribunal under the other heads is also just and appropriate and does not call for any interference.

3. I have heard the learned counsel for the parties and perused the record.

4. From the perusal of the record, it is made out that the appellant-claimants could not prove on record the fact that the deceased was earning Rs. 7,000/-, per month. The accident pertains to the year 1989. Therefore, the amount of Rs. 3,000/- per month assessed by the learned Tribunal cannot be said to be on the lower side. The deceased was 28 years of age at the time of his death. The learned Tribunal has applied the multiplier of 16, which ought to be 17 as per the law laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, It is ordered accordingly. The claimants being six in number, the deduction applied on account of personal expenses is also decreased from 1/3 to 1/4.

5. Hon"ble the Apex Court, in Rajesh and Others Vs. Rajbir Singh and Others, has held that in case of self employed or a person with fixed wages, there must be an addition to the actual income of the deceased while computing future prospects. In the instant case, the deceased was 28 years of age. Therefore, a notional addition of 50% on account of future prospects is ordered.

6. If the above considerations are taken into account, the compensation towards loss of dependency would come to $Rs. 3,000/- + 50\% \times 12 \times 17 = Rs. 6,88,500/-$, as against the amount of Rs. 3,84,000/-, assessed by the learned Tribunal.

7. It is further observed that the learned Tribunal has not awarded any compensation towards "loss of consortium" and "funeral expenses". Keeping in view the law laid down in Rajesh"s case (supra), an amount of Rs. 1,00,000/-, is awarded under the head "loss of consortium", payable to the wife only, whereas, Rs. 10,000/- is granted towards funeral expenses. Another amount of Rs. 1,00,000/- is awarded for loss of love, care and guidance to the minor children, in equal shares.

8. In view of the above, the claimant-appellants are held entitled to the enhanced compensation of Rs. 5,14,500/- [Rs. 3,04,500/- (enhancement towards loss of dependency) + Rs. 1,00,000/- (loss of consortium payable to the wife of the deceased) + Rs. 10,000/- (funeral expenses) + Rs. 1,00,000/- (loss of love, care and guidance, payable to the children of the deceased, in equal shares)] over and above the amount already awarded by the learned Tribunal, which shall be payable to them within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, they shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal, till its realization. With the aforesaid modification in the impugned award, the present appeal is partly allowed.