(2014) 07 P&H CK 0808

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 2142 of 1998

Gurmail Kaur		APPELLANT
	Vs	
Santokh Singh		RESPONDENT

Date of Decision: July 23, 2014

Hon'ble Judges: Navita Singh, J

Bench: Single Bench

Advocate: Kewal Singh, Advocate for H.S. Dhandi, Advocate for the Appellant; Anupam Singla, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Navita Singh, J.
Learned counsel for the parties have been heard.

2. This appeal is directed against the award dated 06.06.1998 passed by the Motor Accidents Claims Tribunal, Patiala, whereby the appellants were granted compensation to the tune of Rs. 7,06,000/-on account of the death of Balram Singh who was husband of appellant No. 1 and father of appellants No. 2 and 3 and son of appellant No. 4.

3. It was alleged in the petition that on 05.09.1996 at about 6:00 P.M., the deceased was going from Village Kathgarh towards Village Bhunerheri on Motor Cycle No. PB-11-F-4084 which was being driven by him while his brother-in-law Sukhwinder Singh alias Pamma was the pillion rider. When they reached near Village Panjeta, Bus No. PB-11-C-9546 being driven by respondent No. 1 came from the opposite side and hit front right side of the motor cycle of the deceased. The bus was being driven in a rash and negligent manner. The deceased received injuries on his face and his forehead was fractured. He died at the spot. He received injuries on other parts of his body as well. Sukhwinder Singh was also injured. Respondent No. 1 fled from the spot leaving the vehicle behind. FIR was lodged regarding the accident.

4. The matter was heard ex parte against respondent No. 1. Respondent No. 2 filed a reply alleging that the petition was not maintainable and that it was based on false facts. It was denied that any accident had taken place and that Balram Singh had died on account of the accident with the bus in question. The liability was entirely denied.

5. Respondent No. 3 admitted the claim of the appellants as he was the brother of the deceased and owner of the motor cycle. The following issues were settled by the Tribunal:-

1. Whether respondent No. 1 caused the death of Balram Singh son of Gurmail Kaur and damaged the motor cycle No. PB-11-F-4084 belong to Harbhinder Singh petitioner by driving Bus No. PB-11-C-9546 negligently? OPP

2. Whether Gurmail Kaur and other petitioners are the legal representatives of Balram Singh deceased? OPP

3. How much compensation Gurmail Kaur and other petitioners are entitled to recover and from whom? OPP

4. How much compensation Harbhinder Singh petitioner is entitled to recover and from whom? OPP

5. Relief.

6. Learned counsel for the appellants argued that the multiplier was rightly applied by the Tribunal according to the age of the deceased but his income was not assessed correctly. He said that the basic income assessed was also inadequate and further addition of 50% of the actual income was not made though the deceased was below 40 years in age. He then argued that widow and four children were dependent on the deceased and as such, dependency was also wrongly deducted to the tune of one third whereas it should have been deducted only to the tune of one fifth. The amount awarded for loss of estate and consortium etc was also not adequate.

7. Learned counsel for respondent No. 2, on the other hand, argued that so far as loss of income is concerned, no actual loss was caused to the legal heirs of the deceased because his vocation was running a dairy and that of an agriculturist. The land which he was owning remained with the appellants and the dairy was also running. The loss on that count was, therefore, only regarding the managerial capacity of the deceased.

8. Learned counsel for the appellants argued that after the death of Balram Singh, the appellants had to engage servants for doing work in the dairy and on the land and, therefore, their income stood reduced to that extent. This argument, however, is not convincing because it is not possible that while Balram was alive he was managing the dairy and agricultural land single handedly. During his lifetime also,

he must have employed servants. There must have been thus marginal loss to the appellants as the deceased was managing the affairs and may be the appellants had to employ one extra person in his place.

9. Learned counsel for the appellants further argued on the same point that in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Apex Court made no distinction to add 50% in the income of the deceased in case he/she was self employed and nothing was excluded on the ground that loss was only in managerial capacity of the deceased. It was held that where the deceased was self employed, the Courts shall usually take only the actual income into account which was there at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

10. In the case in hand, the deceased was only 29 years old and would have earned for years ahead for his family. He was survived by his widow and the elder child (male) who was eleven years old, while the daughter was even two years younger. The widow was thus left hapless to manage all the affairs herself and it is absolutely understandable that she must have faced tremendous difficulty in managing after the death of her husband. It cannot be taken that the income from the dairy and from the land would have remained the same after death of Balram. Addition of 50% as per Sarla Verma''s case (supra) is, therefore, surely reasonable. So far as the deduction is concerned, nothing has come on record that Bachan Kaur, mother of the deceased was totally dependent on him and that her husband Karnail Singh was either not alive or was not earning anything. In the petition, it is written "Smt. Bachan Kaur wife of Karnail Singh" and the word "wife" used would mean Karnail Singh was alive. They had a young son and it is presumable that Karnail Singh was earning and was also looking after the family business. In such event, the deduction towards self dependence to the tune of 1/4th is sufficient and deduction to the tune of 1/5th would be slightly unreasonable.

11. Learned counsel for the appellant, thereafter, argued that Rs. 5,000/- awarded towards loss of consortium and Rs. 2,500/- towards loss of estate were also not sufficient. At least an amount of Rs. 2 lacs should be awarded towards loss of estate. The amount awarded towards loss of consortium is sufficient as per the date of accident. However, the amount for loss of estate can be enhanced though I am not in agreement with the amount prayed for by learned counsel for the appellant.

12. In view of totality of facts and circumstances, it is held that 50% is required to be added to the actual income of the deceased which was 40,000/- per annum and such enhancement is not to be made on the total income of Rs. 58,000 because Rs. 18,000 per annum was awarded towards loss of income for employing an extra servant. As per Sarla Verma''s case (supra) an addition as per the age of the deceased is to be made on the actual income. The basic income of the deceased being 40,000/- per annum, an amount of Rs. 20,000/- is added to the total assessed income which will now be Rs. 78000 per annum instead of Rs. 58,000/- per annum.

Taking out 1/4th as dependency, the remaining income of 3/4th for calculating the compensation would be Rs. 58,500/-. Applying the multiplier of 18, the compensation will come to 10,53,000/-. The amount towards was loss of consortium shall remain the same and so will the amount awarded for funeral expenses. However, towards loss of estate, the amount is enhanced from Rs. 2,500/- to Rs. 20,000/-. Total amount will now come to Rs. 10,80,000/- and is awarded to the appellants. However, terms regarding interest and proportion in which the appellants shall share the amount shall remain the same.

13. The appeal is disposed of accordingly.