

[1]

A.F.R.

Court No. - 37

Case :- FIRST APPEAL FROM ORDER No. - 1237 of 2018

Appellant :- Subhadra Pandey

Respondent :- Siddharth Agrawal And 2 Others

Counsel for Appellant :- Vidya Kant Shukla

Counsel for Respondent :- Rajiv Ojha

Hon'ble Dr. Kaushal Jayendra Thaker,J.

1. Heard Sri Vidya Kant Shukla, learned counsel for the appellant and Sri Rajiv Ojha, learned counsel for the respondent and perused the record.

2. This appeal, at the behest of the claimant, challenges the judgment and award dated 11.12.2017 passed by Additional District Judge, Court No.14/Motor Accident Claims Tribunal, Kanpur Nagar (hereinafter referred to as 'Tribunal') in M.A.C.P. No. 284 of 2014 awarding a sum of Rs.70,000/-with interest at the rate of 7% as compensation.

3. Brief facts as they emerge are that the deceased was 62 years of age at the time of accident which is not in dispute. The claimant was the sole surviving legal heir of the deceased is also not in dispute. The deceased was a retired railway employee and was getting pensions. The pension was halved and the widow was getting Rs.14,000/- which shows that she lost Rs.14,000/- because of the said demise of her husband. The Tribunal has awarded only Rs.70,000/- as per the judgment in **National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 0 Supreme (SC) 1050** holding that there was no loss of income.

4. The Tribunal very strangely held that claimant was the legal

[2]

heir and legal representative of the deceased, the deceased was 62 years of age whose income was shown to be Rs.30,000/- per month but no document was produced and, therefore, the Tribunal did not believe the income to the deceased to be Rs.30,000/-. The Tribunal thereafter went on to hold that the deceased had retired from Railways in the year 2010, he was receiving pension of Rs.28,000/- and after his death, family pension of Rs.14,000/- is being received by the claimant herself. Therefore, as the deceased was getting Rs.28,000/- approx as pension, 50% of the same he would be spending on himself and, therefore, Rs.14,000/- would be the monthly datum figure available to the widow.

5. The Tribunal thereafter very strangely held that she was getting pension of Rs.14,000/-, hence, there was no loss to her and, therefore did not award any amount under the head of loss of earnings and deducted the entire amount granting only Rs.70,000/- with 7% rate of interest. This could not have been done is the submission of learned counsel for the appellant.

6. Can the claimant a widow who receives family pension be deprived of compensation is the main question which arises for consideration. If the answer to it is in the negative, what compensation is she entitled to?

7. In support of his argument, learned counsel for the appellant has relied on the decisions of the **Apex Court in Ramilaben Chinubhai Parmar and others Vs. National Insurance Co. Ltd. and others, 2014 ACJ 1430** and in **Vimal Kanwar and others vs. Kishore Dan and Others, 2013 (3) T.A.C. 6 (S.C.)** and has submitted that the deduction of provident fund, pension and insurance receivable by claimants has been deprecated in the said decision.

[3]

8. As against this Sri Rajiv Ojha, learned counsel for the respondent has submitted that pecuniary advantage is a different issue and the said judgment would not apply to the facts of this case.

9. Submission of Sri Ojha appears to be very attractive but in this case as can be seen, even if this Court goes by the principles of loss of dependency as propounded by the Apex Court and the High Courts, the Tribunal ought to have considered the fact that had her husband survived, she would have got a sum of Rs.28,000/- per month which has now been halved. The multiplier applicable would be '7' as the deceased was in the age bracket of 61-65 years in view of the decision of the Apex Court in **Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121** which has been not considered by the Tribunal and has given reasonings which can be said to be questionable.

10. In view of the decision of this Court in First Appeal From Order No.3154 of 2013 (**Regional Manager, UPSRTC Vs. Smt. Nisha Dubey and others**), no deduction from the pension is allowed. In this case the Tribunal has not granted any amount leave apart deduction from family pension.

11. I am in agreement with learned counsel for the appellant and even if the rough datum figure is considered, it can be considered to be $\text{Rs.}5000 \times 12 \times 7 = 4,20,000/-$ plus Rs.70,000/- plus 10% increase in every three years as per the decision in **Sarla Verma (Supra)** namely Rs.7,000/-. Hence, the total compensation would be Rs.4,97,000/-

12. As far as issue of rate of interest is concerned, it should be 7.5% in view of the latest decision of the Apex Court in **National Insurance Co. Ltd. Vs. Mannat Johal and Others, 2019 (2) T.A.C.**

[4]

705 (S.C.) wherein the Apex Court has held as under :

"13. The aforesaid features equally apply to the contentions urged on behalf of the claimants as regards the rate of interest. The Tribunal had awarded interest at the rate of 12% p.a. but the same had been too high a rate in comparison to what is ordinarily envisaged in these matters. The High Court, after making a substantial enhancement in the award amount, modified the interest component at a reasonable rate of 7.5% p.a. and we find no reason to allow the interest in this matter at any rate higher than that allowed by High Court."

13. Hence, amount of Rs.4,97,000/- with interest at the rate of 7.5% from the date of the filing of the claim petition till the amount is deposited be paid to the claimant.

14. The claimant is widow of a railway officer and, therefore, she is not an illiterate, hence, all the amount need not be invested but shall be transferred to her account which shall be given by her within eight weeks from today. The amount already paid be deducted from the amount to be paid.

15. In view of the ratio laid down by Hon'ble Gujarat High Court, in the case of **Smt. Hansagori P. Ladhani v/s The Oriental Insurance Company Ltd., reported in 2007(2) GLH 291**, total amount of interest, accrued on the principal amount of compensation is to be apportioned on financial year to financial year basis and if the interest payable to claimant for any financial year exceeds Rs.50,000/-, insurance company/owner is/are entitled to deduct appropriate amount under the head of 'Tax Deducted at Source' as provided u/s 194A (3) (ix) of the Income Tax Act, 1961 and if the amount of interest does not exceeds Rs.50,000/- in any financial year, registry of this Tribunal is directed to allow the claimant to withdraw the amount without producing the certificate from the concerned Income- Tax Authority. The aforesaid view has been reiterated by this High Court in Review Application No.1 of 2020 in First Appeal From

[5]

Order No.23 of 2001 (Smt. Sudesna and others Vs. Hari Singh and another) while disbursing the amount.

16. In view of the above, the appeal is partly allowed. Judgment and award passed by the Tribunal shall stand modified to the aforesaid extent. Record and proceedings be sent to the Tribunal. A copy of this order be forwarded to the Tribunal concerned for knowledge.

17. This Court is thankful to both the learned Advocates for getting this matter disposed of during this pandemic.

Order Date :- 7.12.2020
DKS