IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.4620 of 2011.
Date of Decision: 11.02.2016.

Seema and others ....Appellants.

VERSUS

Vipin Kumar and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Madhu Rajan, Advocate for the appellants.
Mr. S.K. Tripathi, Advocate for respondents No.1 and 2.
Mr. D.K. Parjapati, Advocate for respondent No.3.

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SNEH PRASHAR, J.

This is an appeal directed against an award dated 07.10.2010 passed by Motor Accident Claims Tribunal, Gurgaon (for short, "the Tribunal") in MACT case No.90 of 2009 filed by appellants-claimants being legal heirs of deceased Pardeep Singh who lost his life in a vehicular accident.

The prayer of the appellants-claimants is for enhancement of the compensation awarded by the Tribunal. The facts indicate that on 15.11.2009, after finishing his duty in Jyoti Export Line Pvt. Ltd. Udyog Vihar, Phase-I, Gurgaon, Pardeep Singh (deceased) was going to Nathupur, Gurgaon. At about 1:00/1:30 a.m., when he was going on his bicycle towards Shanker Chowk and was near Pipliwala Chowk, a car bearing registration No.DL-1CJ-1666 (hereinafter referred to as the "offending car") being driven rashly, negligently and in a high speed by Vipin Kumar (respondent No.1), came from the side of Ram Chowk and hit his bicycle from the back side. Because of the impact, Pardeep Singh fell down and the bicycle got entangled in the car and was dragged upto a considerable distance. Pardeep Singh suffered multiple grievous injuries. The driver of the offending car fled away from the spot. The accident was witnessed by Dalip Kumar, brother of deceased Pardeep Singh who incidentally was standing at Pipli Chowk at that time.

Pardeep Singh was first taken to General Hospital, Gurgaon from where he was referred to Safdarjang Hospital, New Delhi however, he was admitted in Batra Hospital and Medical Research Centre, Delhi on 16.11.2009 but during treatment he succumbed to the injuries on 27.11.2009.

A petition claiming compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") was filed by legal heirs of deceased Pardeep Singh against driver, owner and insurer of the offending car. Respondents No.1 and 2 filed joint written statement denying involvement of the offending car in the accident, whereas respondent No.3 contested the petition by filing separate written statement and pleaded violation of terms and conditions of the insurance policy by the insured. The factum of accident was also denied.

On the rival contentions of the parties, following issues were settled:-

1. Whether Pardeep Singh has died as a result of rash and negligent driving of the vehicle in question by the respondent No.1 as alleged? OPP.

2. Whether the petitioners are entitled to compensation. If so to what amount and from whom? OPP.

3. Whether the respondent No.1 was not duly licenced driver. If so what effect? OPR.

4. Relief.

Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the Tribunal awarded compensation to the tune of Rs.7,91,615/- to the claimants.

Feeling aggrieved, the claimants Seema and others assailed the award dated 07.10.2010 by filing the instant appeal on the ground that they had not been adequately compensated.

The submissions made by Mr. Madhu Rajan, learned counsel representing the appellants, Mr. S.K. Tripathi, learned counsel representing respondents No.1 and 2 and Mr. D.K. Parjapati, learned counsel representing respondent No.3 have been heard and record perused.

Learned counsel for the appellants-claimants argued that the income of the deceased was wrongly assessed at Rs.5000/- per month by the Tribunal whereas the deceased who was employed with Jyoti export line was earning Rs.9000/- per month by way of salary and by doing over time. No amount was added to the income for computing future prospects and the amount awarded under the head of loss of consortium, funeral expenses and expenses incurred on transportation was on lower side. Also, no amount was awarded for physical and mental agony, loss of love and affection to the claimants.

Learned counsel further submitted that the age of the deceased was 35 years whereas the Tribunal considering the age of the deceased as 45 years has wrongly applied multiplier of 11 instead of 17. Deduction on account of personal and living expenses of the deceased to the tune of 1/3rd out of the income of the deceased was also wrongly made since it should have been only 1/5th of the income.

Perusal of the record shows that PW7 Satyavir Chaudhary testified that Pardeep was permanent employee of Jyoti Apparels and was getting Rs.5000/- per month as salary. He tendered photocopy of the salary register for the month of October, 2009 Ex.PW7/A in this regard. There is no ocular or documentary evidence to prove that the income of the deceased was Rs.9000/- per month. Thus, the Tribunal has rightly assessed the income of the deceased as Rs.5000/- per month. Though the appellants alleged the age of the deceased as 35 years but no document was produced to substantiate their plea. In the postmortem report Ex.P2 the age of the deceased was mentioned as 45 years. Appellant No.3 Smt. Indrani (mother of the deceased) did not step into the witness box to support the fact that her age is 55 years. As such, the age of the deceased taken as 45 years by the Tribunal appears to be right.

Since the age of deceased Shri Pardeep Singh was 45 years, the multiplier of 14 should have been applied instead of 11. Appellant No.4 Radhey Shyam, father of the deceased was not considered to be a dependent of the deceased and the appellants No.1 to 3, being widow, minor son and mother were rightly taken as dependents of the deceased. There being three dependents it was rightly held that the deceased must be spending 1/3rd of his income on himself and remaining was being spent on maintenance of the claimants.

Perusal of the award shows that no amount was added to the income computing the future prospects. In view of law laid down in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170*** as the age of the deceased was 45 years, the claimants are entitled to increase in the income of the deceased by 30% computing the future prospects. Apparently, the sum arrived at by learned Tribunal as Rs.4650/- deducting 1/3rd out of the amount of Rs.5000/- assessed as monthly income is wrong. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income (in Rupees)		Rs.5000/-
2.	Actual age of the deceased		45 years
3.	Increase in future income as per Rajesh and others' case (supra)		Rs.1500/-
4.	Annual dependency		2/3 of Rs.6500 x 12 = Rs.52,000/-
5.	Multiplier		14
6.	Total		7,28,000/-

In addition to the amount of Rs.7,28,000/- calculated towards dependency, the amount of Rs.1,68,815/- awarded towards medical expenses is as per the medical documents proved by the claimants. The amount of Rs.2000/- awarded under the funeral expenses is enhanced to Rs.25,000/- whereas the amount of Rs.5000/- awarded towards loss of consortium is enhanced to Rs.1 lac. A further amount of Rs.1 lac is awarded to the appellants-claimants for loss of love and affection. Further an amount of Rs.20,000/- is awarded to the appellants under the heads of physical and mental agony, attendant etc. which shall include the amount of Rs.2000/- already awarded by the Tribunal. In the above premise, the appellants-claimants are held entitled to compensation of Rs.11,41,815/- as indicated above.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 07.10.2010 passed by the Tribunal is modified. The appellants-claimants are held entitled to enhanced compensation of Rs.3,50,200/- in addition to the amount of Rs.7,91,615/- awarded by the tribunal. The enhanced amount of compensation shall be deposited by respondent No.3- insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of this order till realization. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the tribunal.

(SNEH PRASHAR)
JUDGE

11.02.2016.
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