IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1154 of 2002 (O&M)

DATE OF DECISION : 12.12.2017

Aarti Mutreja and others

.... APPELLANTS

Versus

State of Haryana and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sanjay Jain, Advocate,
for the appellants.

Mr. D.R. Singla, DAG, Haryana.

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AVNEESH JHINGAN, J. (Oral)

The present appeal is against the award dated 22.10.2001 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short, `the Tribunal').

The record of this case was burnt in fire and from the photostat copy of the paper book supplied by the office of Advocate General, Haryana, the file was reconstructed, subject to all just exceptions and further verification.

Ajay Mutreja, aged 40 years, met with a motor vehicular accident on 17.08.1998. He was going from Delhi to Yamuna Nagar in a Maruti Car bearing registration No. DL-9C-4224. The said car was hit by a rashly and negligently driven Haryana Roadways bus bearing registration

No. HR-02-PA-0113. As a result of the accident, Ajay Mutreja suffered multiple injuries and he was taken to Civil Hospital, Ladwa, from where he was shifted to Jaipur Golden Hospital, New Delhi. Ultimately, he succumbed to injuries. FIR No. 312 dated 17.08.1998 was registered.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act') was filed by the widow, two minor sons, mother and unmarried sister of the deceased.

The Tribunal, after appreciating the facts and considering the evidence, awarded a sum of ₹ 7,00,000/- along with interest at the rate of 9% per annum. The amount awarded included a sum of ₹ 5,000/- for funeral expenses and ₹ 5,000/- for loss of consortium.

Aggrieved of the said award, the legal heirs of the deceased have filed this appeal for enhancement of compensation.

I have heard learned counsel for the parties and perused the paper-book and record.

The parties have not disputed the facts regarding involvement of the offending vehicle, rash and negligent driving of the offending vehicle and age of the deceased.

Learned counsel for the appellants argued that in spite of the income tax returns along with the calculation sheets as well as profit and loss account having been exhibited, the Tribunal erred in ignoring the said documents and assessing the income of the deceased as ₹ 4,500/- per month. His grievance is that the deceased was survived by five dependents and instead of 1/3rd, 1/4th deduction should have been made for self expenses. He contended that since the deceased was 40 years of age, multiplier of `15' should have been applied. He further argued that the Tribunal erred in not awarding future prospects. His further grievance is that the amounts awarded for funeral expenses and loss of consortium are on lower side and no amount has been awarded for loss of estate.

Learned counsel for the respondent – State argued that the Tribunal has awarded just and equitable compensation, and there is no scope for further enhancement.

The issue regarding determination of the earning of the deceased is to be decided on the basis of evidence produced before the Tribunal. In the present case, the deceased has produced income tax returns for the assessment years 1997-98 and 1998-99. Apart from the returns, order passed under Section 143 (1) of the Income Tax Act, 1961 for the assessment year 1998-99 was produced on record as Ex.PL. The income tax return for the assessment year 1998-99 shows that gross salary of the deceased was ₹ 60,000/-. He was employed with M/s Advance Finvest (P) Ltd., New Delhi. It is also evident that he was carrying on a business from which he earned net profit of ₹ 66,185/-. In order to support the salary being paid by the employer, `Form-16' was exhibited as Ex.PS. The said form was issued on 30.04.1998, i.e. before the date of the accident. In such circumstances, there was no occasion for the Tribunal to ignore the said documents and to assess the earning of the deceased on guess work. Income tax return would be one of the safest yardstick to assess the earning of the deceased, the Tribunal should have relief upon the said figures. Keeping in view the income shown in the last income tax return, where annual earning of the deceased was shown as ₹ 1,26,000/-, loss of dependency would be calculated accordingly.

The contentions raised by learned counsel for the appellants with regard to deduction for self expenses and multiplier to be applied deserve acceptance, in view of a decision of the Hon'ble Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another,*** (2009) 6 SCC 121. In the said decision, the Hon'ble Apex Court has given a table regarding the multiplier to be applied and deduction to be made for self expenses. As per the said decision, where the deceased is survived by four to six dependents, one-fourth deduction is to be made for personal expenses, and for the deceased aged 40 years, multiplier of `15' has to be applied.

The contentions raised by learned counsel for the appellants for awarding future prospects and compensation under the conventional heads also deserve acceptance, in view of the latest decision of the Hon'ble Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, Special Leave Petition (Civil) No. 25590 of 2014, decided on 31.10.2017.*** As per the said decision, in case of 40 years deceased, who was self employed, 25% future prospects should be awarded. Further, it has been held that a sum of ₹ 70,000/- is to be awarded under the conventional heads, ₹ 15,000/- for loss of estate; ₹ 40,000/- for loss of consortium and ₹ 15,000/- for funeral expenses.

Keeping in view the above discussion, compensation for loss of dependency is re-calculated as under :-

Annual earning of the deceased	₹ 1,26,000/-	
Plus 25% future prospects	₹ 31,500/-	
Total	₹ 1,57,500/-	
1/4th deduction for self expenses	₹ 39,375/-	
Dependency	₹ 1,18,125/-	
Compensation to be awarded by applying multiplier of `15'		1,18,125 x 15 = ₹ 17,71,875/-
Loss of estate		₹ 15,000/-
Loss of consortium		₹ 40,000/-
Funeral expenses		₹ 15,000/-
Total		₹ 18,41,875/-

In view of the above, the award dated 22.10.2001 is modified to the extent that the compensation of ₹ 7,00,000/- awarded by the Tribunal is enhanced by ₹ 13,99,875/-.

The appellants shall be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

December 12, 2017 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes