IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1116 of 2001 (O&M)
Date of Decision:- 07.12.2017

Kasturi & Ors. ....Appellants

Versus

Mahabir Singh & Ors. ...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Sharad Yadav, Advocate, for the appellants.

Mr. R.C.Gupta, Advocate, for respondent No.3 – Insurance Co.

AVNEESH JHINGAN, J. (Oral)

Present appeal has been filed against award dated 12.10.2000 passed by Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal').

The record of this appeal was burnt and from the salvaged record of the partially burnt case, the same was reconstructed subject to all just exceptions and further verification.

In a motor vehicular accident that occurred on 28.07.1997, Ram Kumar, aged 45 years, lost his life. In the said accident vehicle bearing registration No. HR-47/3217 was the offending vehicle. FIR No. 142, dated 28.07.1997 was registered at Police Station Farrukh Nagar.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of the deceased. The Tribunal after appreciating the facts and considering the evidence produced awarded a sum of Rs.2,05,000/- along with interest @12% per annum.

The present appeal has been filed for enhancement of the compensation.

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

Learned counsel for the appellant has argued that the Tribunal erred in not awarding future prospects while calculating the compensation. His grievance is that the deceased was survived by seven dependants and a cut of 1/3rd has been made for self-expenses. He contended that only an amount of ₹3400/- has been awarded for funeral expenses which is on the lower side and no amount has been awarded for loss of estate and loss of consortium.

Learned counsel for the insurance company defended the award and resisted any further enhancement. He argued that since the claimants failed to establish the income of the deceased hence no future prospects should be awarded.

The facts have not been disputed by either of the parties i.e. involvement of the offending vehicle, rash and negligent driving of the offending vehicle, income assessed of the deceased, age of the deceased and the multiplier applied.

The contentions raised by learned counsel for the appellants deserve acceptance in view of the law laid down by the Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Parney Sethi, SLP (Civil) 25590 of 2014,*** decided on 31.10.2017 and in case of ***Hem Raj Vs. Oriental Insurance Company Ltd, in Civil Appal No. 19603 of 2017, decided on 22.11.2017.***

Hon'ble Apex Court in ***National Insurance Co. Ltd.*** (Supra) has held that where the deceased was between 40-50 years of age and was self-employed or having a fixed salary, 25% future prospects should have to be awarded.

It has further been held that Rs.70,000/- (i.e. Rs.15,000/- for loss of funeral expenses, Rs.15,000/- for loss of estate and Rs.40,000/- of loss of consortium) is to be awarded under the conventional heads.

In case of ***Hem Raj Vs. Oriental Insurance Company Ltd,*** (Supra) the Hon'ble Apex Court has held that even where the income is assessed on the basis of minimum wages prevalent at the time of accident even in such cases future prospects have to be added.

Keeping in view the reasons mentioned above and the case law cited above, loss of compensation is re-calculated as under:-

Future prospects = 25% increase to salary i.e

1800 x 25%	=	Rs.2250/-
Annual dependency 2250 x 12	=	Rs.27000/-
Cut off 1/6th	=	Rs. 4500/-
Total	=	Rs. 22,500/-
Applying Multiplier of 14		
Rs.22,500 x 14	=	Rs.3,15,000/-

The amounts already awarded by the Tribunal under the conventional heads are enhanced to Rs.70,000/-

Amount under the conventional heads	=	Rs. 70,000/-
Total	=	Rs. 3,85,000/-

The award dated 12.10.2000 is modified to the extent that the amount awarded of Rs.2,05,000/- awarded by the Tribunal is enhanced to Rs.3,85,000/-.

The claimants would be entitled to the enhanced amount along with interest @6% per annum from the date of filing of the claim petition till realisation.

The appeal is partly allowed in the aforesaid terms.

December 07, 2017 **(AVNEESH JHINGAN)**
tripti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No