

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 670 of 2001 (O&M)
Date of Decision: November 06, 2017

Shakuntla Devi and others

..Appellant(s)

Versus

Khemji Bhai and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajesh Lamba, Advocate
for the appellants.

MR. D.R. Bansal, Advocate
for respondent no.3-insurance company.

ANITA CHAUDHRY, J.

Delay condoned.

This is the claimants' appeal seeking enhancement in the award dated 16.09.1999, passed by the Motor Accident Claims Tribunal, Hisar (here-in-after referred to as the Tribunal).

The record of this file had been burnt in the fire accident which had taken place in the year 2011.

Rohtash was 27 years old when he met with an accident on 19.02.1997. The Tribunal assessed the income of the deceased as Rs.2,500/- per month holding that the minimum wages in that year were Rs.60/- per day and made a deduction of 1/3rd and multiplier of 16 was applied to calculate the loss.

The submission on behalf of the appellants is that the deceased was held to be a driver and he was self-employed and there should have been an addition of 40% towards future prospects in view of the latest judgment rendered by Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi***, Civil Appeal No.25590 of 2014 and a wrong multiplier had been applied and the age was also taken as 27 whereas in the postmortem report it was mentioned as 25. It was urged that no amount was allowed for loss of consortium and very less amount had been allowed for funeral expenses.

The submission on the other hand is that the Tribunal though had noted that the casual labourers could earn Rs.60/- per day and since the deceased used to drive, therefore, he was taken as a driver but he cannot be taken to be self-employed or on any fixed salary and therefore, the latest judgment rendered by Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi*** would not be applicable and there would be no addition towards future prospects. It was urged that the claimants themselves had given the age of the deceased as 27 and they cannot now say that the age mentioned in the PMR should be considered.

Coming to the question of age first, the claimants had given the age of the deceased as 27. The age reflected in the PMR is 25. When the widow herself had given the age of her husband as 27, it was certainly over 25 and the correct multiplier applicable would be 17 and the Tribunal had applied the wrong multiplier.

So far as the question of addition towards future prospects is concerned, the larger Bench had deliberated on the addition of an amount towards future prospects in the case of persons who were self-employed or were working on a fixed salary. In the case in hand, the employer had stepped forward and had stated that he was paying Rs.3,000/- per month to the driver and Rs.2,500/- per month to the conductor. The Tribunal had taken the income to be Rs.2,500/- per month. The deceased was on a fixed salary and considering his age and as he was below 40 years, there would be an addition of 40% and the income would be taken as Rs.3,500/- per month. Deducting 1/3rd towards personal expenses, the amount available for the family would be Rs. 2,334/- per month and the compensation would be Rs. 2,334 x 12 x 17 = Rs.4,76,136/-. The accident had taken place in 1997 and the amount of Rs.5,000/- allowed for funeral expenses was appropriate. No amount had been allowed for loss of consortium. I would add Rs.25,000/- for loss of consortium and Rs.7,500/- for loss of estate. The total of this would be as under:-

Sr. No.	Head of Compensation	Amount
1.	Loss of Dependency	Rs.4,76,136/-
2.	Loss of consortium	Rs.25,000/-
3.	Funeral Expenses	Rs.5,000/-
4.	Loss of estate	Rs.7,500/-

The total of the above comes to Rs.5,13,636/-. The Tribunal had allowed Rs.3,25,000/-, which would be deducted and the balance amount would be paid by the insurance company with interest @ 6% from March 2001 till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

November 06, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No