

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 554 of 2003(O&M)

Date of Decision:5.12.2017

Smt. Pushpa Devi and others

.....Appellants

Versus

Udhai Bhan and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Manoj K. Sood, Advocate
for the appellants.

Mr. Kulbhushan Sharma, Advocate
for respondent No.1.

Mr. R.S. Sihota, Advocate
for respondent No.2.

AVNEESH JHINGAN, J.

This is an appeal for enhancement of compensation filed by the claimants. Earlier it was tagged with FAO No. 5295 of 2002. The issue involved in other two FAOs relates to liability to pay compensation between two parties. There is no need to tag the present appeal alongwith aforesaid FAO's as the present appeal is only for enhancement of compensation. The same is being taken up for hearing today itself.

The record of this case was burnt and has been reconstructed from the salvaged record and copies supplied by counsels, subject to all just exceptions.

The present appeal has been filed against the award dated 5.9.2002 passed by Motor Accidents Claims Tribunal, Faridabad (for short 'the Tribunal').

In a motor vehicular accident that occurred on 18.5.1999 Budhdev aged 27 years lost his life. In the said accident offending vehicle was truck bearing registration No. HNU-9881. It was being driven rashly and negligently. As a result of the injuries suffered in the accident Budhdev died in the Civil Hospital, Hathin. FIR No. 147 dated 18.5.1999 was registered at Police Station Hathin. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the widow and three minor daughters, minor son and parents of the deceased.

The Tribunal after appreciating the facts and considering the evidence, awarded a sum of Rs.1,92,000/- alongwith interest at the rate of 9% per annum.

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

There is no dispute in the present case raised by any of the parties with regard to involvement of the offending vehicle, rash and negligent driving of the offending vehicle, age of the deceased and on the income assessed of the deceased.

Learned counsel for the appellants argued that the deceased was survived by more than four dependents and the Tribunal erred in making deduction of 1/3rd. He further contended that no compensation was awarded under conventional heads and nothing has been awarded for future prospects. He further contended that multiplier of 16 has been applied whereas the deceased was 27 years, therefore, multiplier of 17 should have

been applied.

Learned counsel for the respondents argued that they are not disputing the contentions raised regarding multiplier and self deduction, but argued that at the time of passing of award, there was no law for awarding compensation under conventional heads. The counsels raised dispute with regard to the liability to pay compensation.

The contentions raised by learned counsel for the appellants deserve acceptance, as the contentions are covered by the decision of Hon'ble the Apex Court in **Sarla Verma and others Vs. Delhi Transporation Corporation and another (2009)6 SCC 121, National Insurance Company Limited Versus Pranay Sethi and others Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017 and Hem Raj Versus Oriental Insurance Company Ltd. (in Civil Appeal No. 19602 of 2017 decided on 22.11.2017)** The earning was assessed at Rs.1600/- per month. Multiplier has not been disputed by the parties. As per the decision of Hon'ble the Apex Court in **Hem Raj's case (supra)**, future prospects are to be awarded even where the income is assessed on the basis of minimum wages prevalent at the time of death of the deceased.

As per **Pranay Sethi's case (supra)** it has been held that where the deceased was below 40 years, 40% future prospects should be awarded. The deceased was survived by more than four dependents and as per **Sarla Verma's case (supra)** 1/4th deduction has to be made as there are six dependents and multiplier of 17 has to be applied, since the deceased was 27 years of age. The loss of dependency is recalculated as under:

Annual income 1600 x 12 =19,200/-

Future prospects 40% (19200x 40%=7680)

$$(19200 + 7680 = 26880).$$

$$1/4^{\text{th}} \text{ deduction : } 6720/-.$$

$$26880 - 6720 = 20160.$$

$$\text{Multiplier of 17 : } 20160 \times 17 = 3,42,720/-.$$

The contention raised by learned counsel for the appellants regarding conventional heads deserves acceptance, in view of decision of Hon'ble the Apex Court in **Pranay Sethi's case (supra)**, They are entitled to a sum of Rs.70,000/- under conventional heads i.e. Rs.15,000 for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses and thus the same is hereby awarded to the appellants.

The contention raised by learned counsel for respondents that at the time of passing of the award by the Tribunal, no law existed for awarding of compensation under conventional heads, cannot be accepted. The law laid down by Hon'ble the Apex Court is the law of the land.

In such circumstance, it cannot be argued that the judgment of Hon'ble the Apex Court would not be applicable in the facts of the present case.

Learned counsel for the respondents further contended that the dispute with regard to liability to pay compensation is pending before this Court in two FAOs, that too itself cannot be a ground to keep enhancement appeal pending. The enhanced amount will have to be paid according to the liability fixed in the award. It goes without saying that as and when the dispute of liability is decided, the same will have its own effect at that time as there is no stay granted in favour of any of the parties.

The award dated 5.9.2002 is modified to the extent that the amount awarded of Rs.1,92,000/- is enhanced to Rs.4,12,720/-. The

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

The appeal is partly allowed in the aforesaid terms.

5.12.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No