IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2517 of 2004 (O&M)
Date of Decision:- 14.12.2017

Smt. Kamaljeet Sharma & Ors. ....Appellants

Versus

Harjinder Singh & Ors. ...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Ms. Suman Rudra, Amicus Curiae,
for the appellants.

Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. Ajayvir Singh, Advocate, for respondent Nos. 1 and 2.

Mr. Paul S. Saini, Advocate, for respondent No.3.

AVNEESH JHINGAN, J. (Oral)

Present appeal has been filed against award dated 05.02.2004 passed by learned Motor Accident Claims Tribunal, Ludhiana (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 02.05.2002. Abhilash Kumar Sharma, aged 42 years, lost his life. He was going on a scooter bearing registration No. PB-10-Q-2617. The said scooter was hit by rashly and negligently driven Tata Sumo vehicle bearing registration No. PB-09-D-4501. As a result of the accident he suffered multiple injuries and died on his way to the hospital. FIR was registered.

The legal heirs of the deceased i.e. widow and two minor children filed a claim petition under Section 166 of the Motor Vehicle Accident, 1988 (for short,'the Act'). The Tribunal awarded a sum of Rs.5,60,000/- along with interest @9% per annum.

None appeared for the appellants at the time of admission of the appeal also. Since the record of the lower Court is here and the litigation is under welfare legislation, Ms. Suman Rudra, Advocate, is appointed as amicus curiae. A photocopy of the paper-book is handed over to her. After going through the paper-book and records, she has assisted the Court.

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

Learned amicus curiae has submitted that the deceased was about 40 years of age and the Tribunal erred in applying the multiplier of 14 whereas multiplier of 17 should have been applied. It has further been averred that the Tribunal has not considered the income tax returns and wrongly assessed the income of the deceased as Rs.60,000/- per annum. There is a grievance that no future prospects have been awarded. It is further contended that no amount has been awarded under conventional heads.

Learned counsels for the respondents argued that since the deceased was more then 40 years of age, the multiplier has rightly been applied. They further argued that the Tribunal relying upon the income tax return has assessed the earning of the deceased as Rs.60,000/- per annum. Counsels resisted awarding of future prospects and compensation under conventional heads.

The income tax return for the assessment year 2001-2002 was exhibited before the Tribunal. As per the income tax return the date of birth of the deceased is 13.09.1959. According to the said date of birth the deceased was 42 years plus at the time of accident. In the said return, the income from business and profession has been shown as Rs.1,05,000/- and tax payable was Rs.700/-. The Hon'ble Apex Court has held that earning minus the income tax is to be considered for calculating the compensation. In the present case his annual earning minus income tax is Rs.1,04,000/-, rounded off. The Tribunal erred in taking the annual earning of the deceased as Rs.60,000/-. The earning of the deceased should have been assessed at Rs.1,04,000/-.

The Hon'ble Apex Court in case of ***National Insurance Co. Ltd. Vs. Parney Sethi, SLP (Civil) 25590 of 2014,*** decided on 31.10.2017 has held that where the deceased was self-employed or having fixed salary and in age group of 45 to 50, 25% future prospects are to be awarded. It has further been held that Rs.70,000/- is to be awarded under the conventional heads 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.

The contention raised by the amicus curiae that a multiplier of 17 is to be applied cannot be accepted because as per the documents on record, it has been proved that deceased was 42 years at the time of accident. As per the decision of Hon'ble Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) SCC 121*** multiplier of 14 has to be applied.

As per the discussion above and law cited, calculation of compensation has been made as under:-

Annual earning	=	Rs.1,04,000/-
25% future prospects	=	Rs.26,000/-
Total	=	Rs.1,30,000/-
1/3rd deduction for self-expenses as the deceased survived by three dependents	=	Rs.43,334/-
Total	=	Rs.86,666/-
Multiplier of 14	=	Rs.12,13,324/-
Funeral expenses	=	Rs.15,000/-
Loss of estate	=	Rs.15,000/-
Loss of consortium	=	Rs.40,000/-
Total	=	Rs.12,83,324/-

The award dated 05.02.2004 passed by the Tribunal is modified to the extent that the amount awarded of Rs.5,60,000 /- is enhanced to Rs.12,83,324/-.

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 14, 2017 **(AVNEESH JHINGAN)**
tripti **JUDGE**

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