IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1965 of 2002 (O&M)
Date of Decision:- 12.12.2017

Deepika Rani @ Mangla & Ors. ....Appellants

Versus

Gurmukh Singh & Ors. ...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Satya Vir Singh Yadav, Advocate, for the appellants.

Mr. J.K. Goyal, Advocate, for respondent Nos. 1 and 2.

Mr. Harsh Aggarwal, Advocate,
for respondent No.3 – Insurance Co.

AVNEESH JHINGAN, J. (Oral)

Present appeal has been filed against award dated 14.01.2002 passed by Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') in MACT Case No. 27 of 2001.

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.

Vipin Mangla aged 32 years lost his life in a motor vehicular accident that occurred on 09.02.2001. The accident involved a car bearing registration No. DL-2CD-4371 and another vehicle bearing registration No. PB-10-AL-1950 (for short, 'the offending vehicle'). The offending vehicle was being driven rashly and negligently and it struck against the car as a result of which Vipin Mangla lost his life.

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.5,64,000/- along with interest @12% per annum. The amount awarded included Rs.4000/- for funeral expenses.

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 the relevant documents produced by the counsel for the parties.

The facts have not been disputed by either of the parties with regard to Involvement of the offending vehicle, rash and negligent driving of the offending vehicle, age of the deceased and the multiplier applied.

Learned counsel for the appellants has argued that the Tribunal took the annual earning of the deceased as Rs.50,000/- per year whereas two returns Exhibit 33 and Exhibit 34 were produced before the Tribunal, as per the return for the financial year 1999-2000, the net profit from the business of tent house was Rs.49,706 and for financial year 2000-2001 was Rs.60,230/-. His contention is that even calculation sheets and profit and loss accounts were produced before the Tribunal. Greivance is that Rs.50,000/- assessed is on the lower side. It is contended that the deceased was survived by four dependants and hence 1/4th deduction should have been made for self-expenses. He argued that the amount awarded for funeral expenses 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 argued that return for financial year 2000-2001 was filed after the death of victim Vipin Mangla, which cannot be taken into consideration. He could not raise any serious objection with regard to deductions made for self-expenses and for awarding of compensation under the conventional heads.

The contentions raised by learned counsel for the appellants viz-a-viz deduction made for self expenses is covered by a decision of the Hon'ble Supreme Court in ***Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) SCC 121***. As per the decision in ***Sarla Verma's*** case (supra) 1/4th deduction is to be made where the deceased is survived by 4 to 6 dependants.

The contention raised with regard to conventional heads has been decided by the Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Parney Sethi, SLP (Civil) 25590 of 2014,*** decided on 31.10.2017. As per the said decision 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 issue which remains to be adjudicated is the annual earning of the deceased. From the perusal of the income tax returns and the profit and loss accounts, it is evident that for financial year 1999-2000 the turn over of the business was Rs.3,35,247/- and a net profit was of Rs.49,706/-. In the return filed for financial year 2000-2001 the turn over was Rs.3,36,001/- and the net profit was Rs.60,230/-. It would be appropriate to note at this stage that the deceased met with an accident on 09.02.2001 i.e., virtually at the fag end of the financial year. The contention of learned counsel for the appellants that only the last return should be considered cannot be accepted. Even the contention raised by the learned counsel for the insurance company that the last return should be ignored as it was filed after the death of Vipin Mangla being exaggerated cannot be accepted. It would be evident that except for increase in profit, the turn over has remained virtually same. It is expected that there would be some increase in the turn over in the following year and here the increase is minor or roughly Rs.800/-. Since there is an increase in net profit by Rs.10,000/-, it would be appropriate that if average of net profit of both the years is considered as his annual earning. Rounding off the figure, the annual earning, taking the average of both the years, will be Rs.55000/-. The compensation is recalculated as under:-

Annual earning	=	Rs. 55000/-
Future prospects	=	Rs.22,000/-
Total	=	Rs. 77,000/-
¼ deduction for self – expenses	=	Rs.19250/-
Dependency	=	Rs. 57750
Multiplier Applied 16	=	Rs. 9,24,000/-
Funeral expenses	=	Rs.15,000/-
Loss of Estate	=	Rs.15,000/-
Loss of consortium	=	Rs.40,000/-
Total	=	Rs.9,94,000/-

The award dated 14.01.2002 is modified to the extent that the amount awarded of Rs.5,64,000/- awarded by the Tribunal is enhanced to Rs.9,94,000/-.

The appellants 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 12, 2017 **(AVNEESH JHINGAN)**
tripti **JUDGE**

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