IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 273 of 2008 (O&M)
Date of Decision:- 18.12.2017

Kamla Devi & Anr. .... Appellants

Versus

Mihan Singh & Ors. ... Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Ms. Ekta Thakur, Advocate, for the appellants.

Ms. Aakanksha Sawhney, Advocate, and
Ms. Nimrata Shergill, Advocate, for respondent No.2.

Mr. Pardeep Kumar, Advocate, for insurance company

AVNEESH JHINGAN, J. (Oral)

The present appeal has been preferred against the award dated 24.09.2007, passed by Motor Accident Claims Tribunal, Chandigarh (for short,' the Tribunal').

In a motor vehicular accident that occurred on 26.11.2005, Satish Kumar, aged 21 years lost his life. He was coming back on his bicycle after finishing the work in the party. It was alleged that he was working as a cook. Rajesh Kumar was the pillion rider on his bicycle. A rashly and negligently driven Chandigarh Transport Undertaking bus bearing registration No. CH-01G-8826 struck against the bicycle. As a result Satish Kumar suffered multiple injuries and died in General Hospital, Sector 16, Chandigarh.

In a claim petition filed by the legal heirs of the deceased under Section 166 of the Motor Vehicles Act, 1988 (for short,'the Act'), the

Tribunal awarded a sum of Rs.1,94,000/- along with interest @7.5% per annum. The amount awarded includes Rs.2000/- for funeral expenses.

The appellants have filed the present appeal for enhancement of the compensation.

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

Learned counsel of the appellants argued that the deceased was working as a cook and this was duly proved by the deposition of the mother of the deceased and the oral evidence of Rajesh Kumar. Her grievance is that the monthly earning assessed of the deceased as Rs.3000/- is on the lower side. She argued that no future prospects have been awarded. The contention is that the deduction made for self-expenses of 2/3rd is wrong and 1/2 deduction should have been made. The grievance is against the multiplier of 16 as the deceased was 21 years of age. Her further grievance is that the amount awarded for funeral expenses is on the lower side and no compensation has been awarded for loss of estate.

Learned counsel for the respondents argued that the claimants have failed to establish that deceased was working as a cook and his earning was Rs.8000/- per month. They further argued that since there was no income established, no future prospects should have been awarded. The respondents resisted the issue of deduction made for self-expenses, multiplier applied and for conventional heads but the said defence was not vehemently put forward in view of the decision of Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Parney Sethi, SLP (Civil) 25590 of 2014,*** decided on 31.10.2017 and in ***Sarla Verma Vs. Delhi Transport***

Corporation, 2009 (6) SCC 121.

The contention raised by learned counsel for the appellants challenging the monthly earning of the deceased is without any substance and is liable to be rejected. Even if it is assumed that it has been proved on record that the deceased was working as a cook, there is not even iota of evidence to establish that he was earning Rs.8,000/- per month. In such circumstances, the only reliable basis could be the minimum wages prevalent at the time of the accident. The minimum wages prevalent at the time of accident i.e. November 2005, even for a skilled labourer was Rs.2570/-. The Tribunal had already assessed Rs.3000/- per month. In such circumstances, no grievance survives, so far as monthly earnings are concerned.

The contentions raised by the counsel for the appellants with regard to awarding of future prospects, deduction for self-expenses multiplier to be applied and conventional heads are duly supported by the decisions of Hon'ble Apex Court in ***National Insurance Co. Ltd's*** case (supra) and ***Sarla Verma's*** case (supra).

There is no dispute raised by the parties with regard to involvement of the offending vehicle, rash and negligent driving of the offending vehicle, age of the deceased i.e. 21 years and the fact that he was unmarried.

In ***National Insurance Co. Ltd.*** case (supra), the Hon'ble Apex Court has held that 40% future prospects are to be awarded where the deceased was below 40 years of age; self-employed or having a fixed salary.

In case of ***Hem Raj Vs. Oriental Insurance Company Ltd, in***

Civil Appal No. 19603 of 2017, decided on 22.11.2017, the Hon'ble Apex Court has held that even where income is assessed on the basis of minimum wages prevalent at the time of accident, even in such cases, future prospects should be awarded.

Hon'ble Apex Court in ***Sarla Verma's*** case (supra) has given tables with regard to deductions to be made for self-expenses and multilier to be applied. As per the table, since the deceased was unmarried, 1/2 deduction should have been made for self-expenses and a multiplier of 18 should have been applied as deceased was 21 years of age.

In ***National Insurance Co. Ltd.*** case (supra), the Hon'ble Apex Court has held that Rs.15,000/- is to be awarded for funeral expenses and Rs.15,000/- for loss of estate.

For the reasons mentioned above and the case law cited the compensation is recalculated as under:-

Annual earning	=	Rs.36,000/-
40% addition towards future prospects	=	Rs.14400/-
Total	=	Rs.50,400/-
1/2 deduction for self expenses	=	Rs.25,200/-
Apply multiplier of 18	=	Rs.4,53,600/-
Funeral expenses	=	Rs.15,000/-
Loss of estate	=	Rs.15,000/-
Total compensation	=	Rs.4,83,600/-

The award dated 24.09.2007 is modified to the extent that the amount awarded of Rs.1,94,000/- awarded by the Tribunal is enhanced to Rs.4,83,600/-.

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 18, 2017 **(AVNEESH JHINGAN)**
tripti **JUDGE**

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