IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4636 of 2011

DATE OF DECISION : 04.12.2017

Smt. Kashmiri Devi and others

.... APPELLANTS

Versus

Union of India and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Atul Gaur, Advocate, for
Mr. Sumeet Goel, Advocate,
for the appellants.

Ms. Amandeep Kaur, Advocate, for
Ms. Balwinder Kaur, Advocate,
for respondents No.1 and 2.

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AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 31.01.2011 passed by the Motor Accident Claims Tribunal, Panchkula (for short, `the Tribunal').

The factual matrix of the present case are that in a motor vehicular accident that occurred on 13.04.2009, Malkeet Singh, aged 45 years, lost his life. He was going on his Bajaj Chetak scooter bearing registration No. HR-49-4405. The said scooter was hit by a rashly and negligently driven Army vehicle bearing registration No. 00D-13157 L (for short, `the offending vehicle'). As a result of the accident, Malkeet Singh suffered grievous injuries and was taken to General Hospital, Sector 6, Panchkula, where he was declared brought dead. FIR No. 158 dated 13.04.2009 was registered at Police Station Sector 5, Panchkula.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the legal heirs of the deceased.

The Tribunal, after appreciating the facts and considering the evidence produced, awarded a sum of ₹ 4,51,000/- along with interest at the rate of 7.5% per annum. The said amount includes a sum of ₹ 5,000/- for funeral expenses and another sum of ₹ 5,000/- for loss of consortium.

Aggrieved of the said award, the present appeal has been filed by the claimants for enhancement of the compensation amount.

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

In the present case, no dispute has been raised by either of the parties regarding the involvement of the offending vehicle, rash and negligent driving of the offending vehicle, age of the deceased, income assessed of the deceased, multiplier applied and deduction made for self expenses.

The two issues raised in the present appeal are that no future prospects have been awarded and the amount awarded under the conventional heads is on the lower side.

Learned counsel for respondents No.1 and 2 defended the award and argued that just and equitable amount has been awarded, as such, there cannot be any further enhancement.

The contentions raised by learned counsel for the appellants deserve acceptance, in view of the latest decision of the Hon'ble Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others,*** Special Leave Petition (Civil) No. 25590 of 2014, decided on 31.10.2017. In the said decision, it has been laid down that in a case where the deceased was self-employed or on a fixed salary, and was between the age of 40 to 45 years, 25% future prospects should be added to his established income. It has further been held that an amount of ₹ 70,000/- is to be awarded under the conventional heads, i.e. ₹ 15,000/- for loss of estate, ₹ 40,000/- for loss of consortium and ₹ 15,000/- for funeral expenses.

In the present case, income of the deceased has been assessed on the basis of daily wages prevalent at the time of the accident. In such circumstances also, future prospects have also to be awarded, as has been held by the Hon'ble Apex Court in ***Hem Raj Vs. The Oriental Insurance Company Limited,*** Special Leave Petition (Civil) No. 22134 of 2016, decided on 22.11.2017. In this decision, it has been held that where income of the deceased has been assessed on the basis of minimum wages, in that case also, future prospects have to be added to the income of the deceased.

There is no dispute on facts of the case. Even, the loss of dependency calculated by the Tribunal has not been disputed. In such circumstances, 25% future prospects are added to the amount of ₹ 4,41,000/- awarded by the Tribunal for loss of dependency. This amount of future prospects on calculation comes to ₹ 1,10,250/-.

The Tribunal has awarded ₹ 5,000/- for funeral expenses and ₹ 5,000/- for loss of consortium, but no amount has been awarded for loss of estate. In view of the law laid down by the Hon'ble Apex Court in ***Pranay Sethi's case*** (supra), the amounts awarded for funeral expenses and loss of consortium are enhanced to ₹ 15,000/- and ₹ 40,000/-, respectively, and an amount of ₹ 15,000/- is awarded for loss of estate.

In view of the above, the award dated 31.01.2011 is modified to the extent that the compensation of ₹ 4,51,000/- awarded by the Tribunal is enhanced by ₹ 1,70,250/-.

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

The appeal is partly allowed in the aforesaid terms.

December 04, 2017 **(AVNEESH JHINGAN)**
ndj **JUDGE**

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