IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5650 of 2011

DATE OF DECISION : 22.12.2017

Manjuran and others

.... APPELLANTS

Versus

Vinod Kumar and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Madhur Goyal, Advocate, for
Mr. Harshit Jain, Advocate,
for the appellants.

Mr. Vipul Sharma, Advocate, for
Mr. Paul S. Saini, Advocate,
for respondent No.2 – Insurance Company.

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AVNEESH JHINGAN, J.

The present appeal is against the award dated 05.03.2011 passed by the Motor Accident Claims Tribunal, Sangrur (for short, `the Tribunal').

In a motor vehicular accident, that occurred on 27.11.2009, Biru Khan, aged 37 years, lost his life. He along with one Mithu Khan was standing in front of a wine shop near village Kular Khurd. A rashly and negligently driven car bearing registration No. PB-11-AL-9861 rammed into Biru Khan. He was rushed to Civil Hospital, Sangrur, but was declared brought dead. FIR was registered.

In a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act') filed by the legal heirs of the deceased, the Tribunal awarded a sum of ₹ 3,52,500/- along with interest at the rate of 6% per annum. The amount awarded included ₹ 15,000/- under the conventional heads.

The present appeal is for enhancement of compensation.

I have heard learned counsel for the parties and perused the paper-book and the relevant documents produced by them.

Parties have not disputed the involvement of the offending vehicle, rash and negligent driving of the offending, age of the deceased, multiplier applied and the deduction made for self expenses.

Learned counsel for the appellants argued that the deceased was working as a mason, yet the Tribunal assessed his monthly earning as ₹ 2,500/-, which is even less than the minimum wages of an unskilled labourer. His grievance is that no future prospects have been added. He further argued that the amounts of ₹ 5,000/- each awarded for funeral expenses, loss of estate and loss of consortium are on the lower side.

Learned counsel for respondent No.2 – Insurance Company argued that the claimants failed to establish the monthly earning of the deceased and it was not proved that he was a mason by profession, hence future prospects should not be awarded. He could not raise any serious objection to enhancement of compensation under the conventional heads, in view of the settled position of law.

The contention raised by learned counsel for the appellants with regard to assessing the monthly earning of the deceased deserves acceptance. In cases, where the monthly earning of the deceased could not be established, the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of the accident. There is no dispute that in November, 2009, in the State of Punjab minimum wages for an unskilled labourer was ₹ 3,400/- per month.

The contentions raised by learned counsel for the appellants with regard to adding of future prospects and enhancement of compensation under the conventional heads also 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.*** It has been held that where the deceased was below 40 years of age and was self-employed or having a fixed salary, 40% future prospects should be added. It has also been held in the said decision that a sum 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.

The Hon'ble Apex Court in ***Hem Raj Vs. Oriental Company Ltd.,*** it has been held that even in cases where income of the deceased is assessed on the basis of minimum wages prevalent at the time of the accident, future prospects have to be added.

In view of the above discussion and the case laws cited, the compensation to be awarded to the appellants is re-calculated as under :-

Annual earning of the deceased 3,400 x 12	= ₹ 40,800/-	
Add 40% future prospects	= ₹ 16,320/-	
Total	= ₹ 57,120/-	
Less 1/4th deduction for self expenses	= ₹ 14,280/-	
Dependency	= ₹ 42,840/-	
Compensation to be awarded by applying multiplier of 15		42,840 x 15 = ₹ 6,42,600/-
Loss of estate		₹ 15,000/-
Loss of consortium		₹ 40,000/-
Funeral expenses		₹ 15,000/-
Total		₹ 7,12,600/-

Consequently, the award dated 05.03.2011 is modified to the extent that the compensation of ₹ 3,52,500/- awarded by the Tribunal is enhanced to ₹ 7,12,600/-.

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 22, 2017 **(AVNEESH JHINGAN)**
ndj **JUDGE**

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