IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No. 1710 of 2012 (O&M)
Date of Decision:- 13.11.2017

Smt. Premi Devi .... Appellant

Versus

Brijesh & Ors. .... Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. R.S.Hooda, Advocate, for the appellant.

AVNEESH JHINGAN, J. (Oral)

C.M No. 23427-CII of 2017

Applicant seeks restoration of the appeal, which was dismissed for non-prosecution vide order dated 23.10.2017.

Notice of this application.

On the asking of Court, Mr. Naveen Kapur, Advocate, accepts notice on behalf of respondent- Insurance Co. and submits that he has no objection if the appeal is restored to its original number.

After hearing learned counsel for the parties, instant application is allowed, as prayed for. Order dated 23.10.2017, whereby the appeal was dismissed for non-prosecution, is recalled. The appeal is restored to its original number and taken on board today itself for hearing with the consent of both parties.

F.A.O No. 1710 of 2012

The present appeal has been filed by the legal heirs of Ajit Jha for enhancement of the compensation awarded by the Motor

Accident Claims Tribunal, Gurgaon, (for short, 'the Tribunal'), vide its award dated 28.11.2011.

Bare facts necessary for adjudication of the present appeal are that on 13.11.2009 Ajit Jha was hit by rashly and negligently driven TATA 407 bearing registration No. HR-55B-0078. As a result of the accident he sustained grievous injuries and was shifted to Pushpanjali Hospital, Gurgaon from where he was shifted to Safdarjung Hospital, New Delhi and ultimately succumbed to his injuries on 11.12.2009. FIR No. 439 dated 30.11.2009 was registered at Police Station Sadar (Gurgaon).

The legal heirs of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') before Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal'). The Tribunal after considering the witnesses and the evidence produced, awarded a sum of ₹4,24,400/- along with interest @7.5%. This amount awarded included ₹20,000/- under the conventional Heads.

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

Learned counsel for the appellant argues that the deceased was earning ₹10,200/- per month. The Tribunal should have adopted that figure rather than assessing income assessed as ₹3600/- per month. He further argued that amount awarded under the conventional Heads is on the lower side. He further argued that the Tribunal has wrongly applied the multiplier of 13 when the deceased was 40 years old.

Learned counsel for the insurance company resisted the enhancement and contended that the claimants failed to prove the monthly income of the deceased. He resisted the enhancement of the multiplier and the amount awarded under the conventional Heads.

From the perusal of the record and the award it is evident that the claimants have failed to substantiate that the deceased was earning ₹10,200/- per month. Be that as it may, the safest yard-stick the Tribunal could have applied was the minimum wages prevalent in the State of Haryana at the time of accident. The minimum wages at the relevant time for unskilled labour was ₹3,914/-. The same is rounded off as ₹3,900/-.

The issue regarding the multiplier has been settled by the Hon'ble Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) SCC 121.*** In the said decision a table for applying the multiplier according to the age of the deceased has been mentioned. In the said table from 36 to 40 a multiplier of 15 has to be applied whereas in the present case a multiplier of 13 has been applied.

It would be pertinent to mention at this stage that the decision of ***Salra Verma*** (Supra) qua the multiplier aspect has been approved by the Hon'ble Apex Court in the later decision of ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors. ,*** SLP (Civil) 25590 of 2014, decision dated 31.10.2017.

In case of **National Insurance Co. Ltd.** (Supra), the Hon'ble Apex Court has held that amount of ₹70,000/- is to be awarded under the Conventional Heads i.e. ₹15,000/- for funeral expenses; ₹15,000/- for loss of estate and ₹40,000/- for loss of consortium.

There is no dispute by the parties with regard to 1/3rd deduction of self-expenses. The loss of dependancy is recalculated taking the monthly earning as ₹3900/- and applying the multiplier of 15:-

Monthly income	-	₹3900/-
Less 1/3rd deduction for self-expenses	-	₹1300/-
Total	-	₹2600/-

Rs. 2600 X 12 and applying multiplier of 15 = ₹4,68,000/-.

The amount of ₹20,000/- awarded under the Conventional Heads of loss of estate, funeral expenses and loss of consortium is enhanced to ₹70,000/-.

Accordingly, the award dated 28.11.2011 is modified to the extent that amount awarded of ₹4,28,000/- is enhanced to ₹5,68,000/-.

The appellant shall be entitled to the interest on the enhanced amount along with interest @6% from the date of filing of the claim petition till realisation.

The appeal is partly allowed.

November 13, 2017 **(AVNEESH JHINGAN)**
tripti **JUDGE**

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