IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4799-2012 (O&M)
Date of decision: 20.12.2017

Reena and others .... Appellants

Versus

Pardeep Kumar and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Amit Jaiswal, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate
for respondent No.3.

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Avneesh Jhingan, J.

The present appeal has been filed against the award dated 30.03.2012 passed by Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as the 'Tribunal').

The motor vehicular accident was caused on 11.05.2011 by a rashly and negligently driven truck bearing registration No.HR-12A-8230 (for short, 'the offending vehicle'). As a result of the accident, Rajesh Kumar, who was going on his motorcycle, died as the offending vehicle hit him from back and head of Rajesh Kumar was crushed under the tyre of the offending vehicle. FIR No.73 dated 11.05.2011 was registered at Police Station Shehzadpur.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by widow, three minor children and mother of the deceased.

The Tribunal after considering the facts and appreciating the evidence, awarded a sum of Rs.5,48,000/- along with interest @ 7.5% per annum.

The present appeal has been filed for enhancement of compensation.

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

Learned counsel for the appellants has argued that the Tribunal has assessed the monthly earning of the deceased as Rs.4200/- which is lower than the minimum wages prevalent at the time of the accident for an unskilled labourer. He argued that no future prospects have been awarded and 1/3rd deduction made for self expenses is wrong as the deceased was survived by five dependents. His grievance is that multiplier of 16 has been applied, whereas the deceased was 30 years of age and multiplier of 17 should have been applied. It has been argued that the amount awarded of Rs.9500/- for funeral expenses, loss of consortium and loss of estate is on the lower side.

Learned counsel for the Insurance Company has argued that the claimants had failed to establish the earning of deceased as the deposition of employee was not believed by the Tribunal. He further argued that since there was no established income, no future prospects should be awarded.

Learned counsel for the Insurance Company was not able to raise any serious issue regarding deduction for self expenses, multiplier applied and amounts to be awarded under the conventional heads in view of the latest decision of the Hon'ble Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors. in SLP (Civil) No.25590 of 2014 decided on 31.10.2017***.

The contention raised by learned counsel for the appellants with regard to monthly earning of the deceased deserves acceptance. In case the monthly earning of the deceased was not established the safest yardstick would have been to rely upon the minimum wages prevalent in the State at the time of the accident. There is no dispute that minimum wages of an unskilled labouer was Rs.4500/- per month at that time.

The contentions raised by learned counsel for the appellants with regard to future prospects, deduction for self expenses, multiplier applied and amounts to be awarded under the conventional heads are supported by the decision of the Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra), Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77*** and ***Hem Raj vs. Oriental Insurance Company Ltd. in Civil Appeal No.19603 of 2017, decided on 22.11.2017.*** The Hon'ble Apex Court has held that where the deceased was below 40 years of age and was self employed or having fixed salary, 40% future prospects should be awarded.

In ***Hem Raj's case (supra),*** the Hon'ble Apex Court has held that even where the income is assessed on the basis of minimum wages prevalent at the time of accident even in such cases future prospects have to be added.

The Hon'ble Apex Court in case of ***National Insurance Company Ltd.'s case (supra)*** has held that the amount of Rs.70,000/- is to be awarded under the conventional heads i.e Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium.

The issue regarding multiplier applied and deduction for self expenses to be made has been dealt with by the decision of Hon'ble Apex Court in case ***Sarla Verma's case (supra),*** which has been approved in ***National Insurance Company Ltd.'s case (supra).*** As per the said decision, 1/4th deduction for self expenses has to be made where the deceased is survived by 4 to 6 dependants. A multiplier of 17 has to be applied where the age of the deceased is 26 to 30.

In the present case, it has not been disputed that the deceased was 30 years of age. In view of the above mentioned reasons and the case cited above, the compensation is recalculated as under :-

Annual income	Rs.4500x12=Rs.54000/-
Add 40% future prospects	Rs.21,600/-
Total income	Rs.75,600/-
1/4th deduction for self expenses	Rs.18,900/-
Dependency	Rs.56,700/-
Applying multiplier of 17	Rs.9,63,900/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Total	Rs.10,33,900/-

The award dated 30.03.2012 is modified to the extent that the amount awarded by the Tribunal of Rs.5,48,000/-is enhanced to

Rs.10,33,900/-.

The claimants would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

20.12.2017
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1.Whether the order is speaking/reasoned: Yes/No

2.Whether the order is reportable : Yes/No