

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 605 of 2012

DATE OF DECISION : 13.12.2017

Suman and others

.... APPELLANTS

Versus

Dharminder Kumar Sharma and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sudhir Aggarwal, Advocate,
for the appellants.

Mr. Subhash Goyal, Advocate,
for respondent No.3 – Insurance Company.

* * *

AVNEESH JHINGAN, J. (Oral)

The present appeal is against the award dated 28.09.2011 passed by the Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal').

Sunil Kumar, aged 45 years, lost his life in a motor vehicular accident, that occurred on 28.07.2010. He was going on his motor cycle bearing registration No. HR-51-W-6750. He was hit by a rashly and negligently driven Toyota Fortuner bearing registration No. HR-26AZ-0208 (for short, 'the offending vehicle'). As a result of the accident, Sunil Kumar suffered fatal injuries and was declared brought dead by the doctors of General Hospital, Sohna. FIR No. 246 dated 28.07.2010 was registered at Police Station Sohna.

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

The Tribunal, after appreciating the facts and considering the evidence produced, awarded a sum of ₹ 4,88,000/- along with interest at the rate of 7.5% per annum. The amount awarded included ₹ 20,000/- towards transportation, funeral expenses, loss of estate and loss of consortium.

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

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

Learned counsel for the appellants argued that the income tax and sales tax returns of the deceased were exhibited before the Tribunal. The Tribunal erred in ignoring the said returns and assessing the monthly income of the deceased as ₹ 4,000/-. He contended that no future prospects have been added by the Tribunal, while calculating the loss of dependency. His further grievance is that the amount of ₹ 20,000/- awarded under the conventional heads is on lower side.

Learned counsel for respondent No.3 – Insurance Company argued that the approach adopted by the Tribunal is in accordance with the law and the income tax returns were not to be relied upon, as the originals of the same were not brought before the Tribunal.

The contentions raised by learned counsel for the appellants deserve acceptance. From a perusal of the record, it would be evident that

the returns filed under the Income Tax Act as well as with the Sales Tax authorities were filed along with the accompanying documents, i.e. computation sheets etc. The genuineness of the said documents was not challenged at any stage. If the Tribunal had a reservation regarding the photostat copies, according to the principle of fair play, it should have put to the claimants to produce the original documents. Neither any such opportunity was afforded nor any objection was raised during the proceedings. The Tribunal further relied upon the fact that the deceased was getting salary from the firm and was also showing the income from machinery repair. There is no bar in law that an individual sharing the profits of his concern cannot have remuneration. From a perusal of the record, it is evident that the deceased was having annual income of ₹ 1,28,500/-. There was no occasion with the Tribunal for not relying upon the said record. The income tax and sales tax returns are one of the safest documents to assess the earning.

As per 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**, future prospects of 25% are to be added, as the deceased was self employed and was more than 40 years of age. In view of the said decision, a sum of ₹ 70,000/- is to be awarded under the conventional heads, ₹ 15,000/- for loss of estate; ₹ 40,000/- for loss of consortium and ₹ 15,000/- for funeral expenses.

In view of the above, the compensation to be awarded to the

appellants is being re-calculated as under :-

Annual earning of the deceased = ₹ 1,28,500/-

25% future prospects = ₹ 32,125/-

Total = ₹ 1,60,625/-

1/4th deduction for self expenses = ₹ 40,157/-

Dependency = ₹ 1,20,468/-

Compensation to be awarded by applying
multiplier of '13' $1,20,468 \times 13 = ₹ 15,66,084/-$

Loss of estate ₹ 15,000/-

Loss of consortium ₹ 40,000/-

Funeral expenses ₹ 15,000/-

Total ₹ 16,36,084/-

The net result is that the award dated 28.09.2011 is modified to the extent that the amount of ₹ 4,88,000/- awarded by the Tribunal is enhanced to ₹ 16,36,084/-.

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 13, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No