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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.10070 of 2014
Date of Decision: 15.03.2017

Kamla and another ....Appellants

Versus

Sheopal (since deceased) through LRs ....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sanjeev Kodan, Advocate
for the appellants.

*****

DAYA CHAUDHARY, J.

This appeal has been filed by appellants for modification of award dated 27.05.2014 passed by the Motor Accident Claims Tribunal, Jhajjar (here-in-after called as `the Tribunal'), whereby, they have been awarded compensation to the tune of ₹ 2,84,000/- by allowing claim petition under Section 166 of the Motor Vehicles Act on account of death of Sonu in the accident.

Briefly, the facts of the case, as made out in the present appeal, are that the appellants are parents of deceased Sonu, who met with an accident and died on account of injuries received in the accident. As per claim petition, on 16.05.2011, deceased Sonu was going from Jhajjar to Village Suhra on motorcycle bearing RC No.HR-14-5278. At about 11.00 a.m., when he reached near Poultry Farm of Village Silani, offending motorcycle bearing RC No.HR-14H-3419 came from Gurgaon side in a zig-zag manner at a high speed. Said motorcycle struck with the motorcycle

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of Sonu, due to which, both the motorcyclists fell down on the road and Sonu sustained injuries. Both were shifted to General Hospital by Dharmender and Jai Parkash of Village Suhra as they were present at the place of accident per chance. However, Sonu was declared dead by the doctor. The matter was reported to the police and on the basis of statement of said Dharmender, FIR was registered on the same day at about 1.50 p.m against unknown person. During investigation, it was found that the driver of the offending vehicle, namely, Sheopal had also died due to injuries in the same accident so the claim petition was filed against legal representatives of driver-cum-owner and its insurer. The claim petition was contested by the respondents by filing their respective written statements.

The following issues were framed by the Tribunal ;

> *" (i) Whether the accident took place due to rash and negligent driving of respondent No.1 as alleged? OPP.*
> *(ii) If issue No.1 is proved, whether claimants are entitled to get compensation if so, to what amount and from whom ? OPP.*
> *(iii) Whether respondent No.1 was not holding a valid and effective driving license at the time of accident, if so its effect ? OPR-2.*
> *(iv) Relief."*

On the basis of evidence led by the parties, the claim petition was partly allowed and the claimants were awarded compensation to the tune of ₹ 2,84,000/- under Section 166 of the Motor Vehicle Act, which was to be paid jointly and severally on account of death of Sonu. The amount of compensation along with interest was apportioned amongst the claimants equally.

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Being not satisfied by the amount of compensation, stating to be inadequate, the present appeal has been filed.

Learned counsel for the appellants submits that the deceased was 22 years of age at the time of accident and the multiplier should have been applied as per age of the deceased but the Tribunal has applied multiplier by considering the age of his parents. The income of the deceased was assessed as ₹ 4,000/- per month, which is on the lower side and nothing has been paid towards future prospects whereas it should be 50% of actual salary. Even the amount awarded towards transportation is also on the lower side and nothing has been awarded towards love and affection. At the end, learned counsel for the appellants submits that as per notification of 2011 applicable at the time of accident, the minimum wages of workers for skilled/semi skilled should have been taken into consideration as it was ₹ 4478.21 for semi skilled and ₹ 4738.21 for skilled workers, which was made applicable w.e.f. 01.01.2011.

Learned counsel has also relied upon the judgment of Hon'ble the Apex Court in case ***Munna Lal Jain and another vs Vipin Kumar Sharma and others 2015(3) RCR (Civil) 447***.

Notice of motion was issued to respondent No.6-National Insurance Company on 05.05.2015 but in spite of service, none has appeared and it was proceeded *ex-parte* vide order dated 15.10.2015.

Heard the arguments of learned counsel for the appellants and have also perused the award passed by the Tribunal.

The facts relating to accident, filing of claim petition, registration of FIR and passing of award by the Tribunal are not disputed. Even the age of deceased-Sonu has not been disputed.

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As per claim petition filed by the claimants, Sonu was earning ₹ 10,000/- per month by doing the agriculture work, milk dairy and other labour work and was contributing the same to his family. Copy of *Fard Jamabandi* of the land possessed by claimant No.2-Khajan Singh was also tendered in evidence as Exhibit P-4 to show that the claimants are agriculturists but the land possessed by claimant No.2-Khajan Singh is less than two acres. Sonu was 22 years of age at the time of accident. His income has been assessed as ₹ 4,000/- per month and after deducting 50% for his personal purposes, the dependency has been considered which comes to ₹ 2,000/- per month. The multiplier of 11 has been applied by considering the age of the parents and an amount of ₹ 20,000/- has been awarded on account of transportation and last rites etc. The total amount of compensation has been awarded to the tune of ₹ 2,84,000/-. As the father of the deceased was having two acres of agricultural land, he might be contributing by participating in the agricultural work. In case, the minimum wages of unskilled labourers is taken into consideration as per notification issued by State of Haryana at the time of accident, it was ₹ 4348.21/- and the Tribunal has assessed @ ₹ 4,000/- p.m. The claimants are mother and father of the deceased and their age has been considered by applying the multiplier.

In view of ***Smt. Sarla Verma's*** case (supra), the multiplier of 18 should have been in case the age of the deceased was 22 years. As far as deduction towards personal and living expenses are concerned, para No.15 of said judgment is relevant, which is as under :-

> *" 15. ... In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more*

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> *on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which even the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father."*

It has been observed in said para of ***Smt. Sarla Verma's*** case (supra)that in case, the deceased is bachelor then he spends more amount on himself and otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically.

In the present case, 50% deduction has been made, whereas, it should have been 1/3rd. Regarding future prospects, a three-Judge Bench of Hon'ble the Apex Court held in case ***Rajesh and others vs Rajbir Singh and others 2013(3) RCR (Civil) 170*** that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects.

Nothing has been paid towards funeral expenses whereas the claimants are held entitled for ₹ 25,000/- towards funeral expenses.

In view of the facts as mentioned above, the present appeal deserves to be allowed. However, the Tribunal is directed to calculate the amount of compensation by considering the minimum wages of ₹ 4348.21/- given to un-skilled labourer as per notification prevalent during the year

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2011, by applying the multiplier, keeping in view the age of the deceased as per ***Smt. Sarla Verma's*** case (supra) and also by deducting 1/3rd for personal expenses and adding 50% towards future prospects after calculating the amount. Necessary exercise be done within a period of two months from the date of receipt of certified copy of the order and thereafter the enhanced amount be released to the claimants within a period of one month. The amount already awarded be adjusted towards total amount of compensation, if already released.

(DAYA CHAUDHARY)
JUDGE

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Whether speaking/reasoned Yes

Whether Reportable Yes