IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

F.A.O. No. 2983 of 2013(O&M)
Date of decision November 20, 2017

Santosh and another

.... Appellants

Versus

Kulwant Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R. S. Mamli, Advocate
for the appellants.

Mr. R. S. Sharma, Advocate
for the respondent No.3-Insurance Co.

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AVNEESH JHINGAN, J (ORAL)
CM NO. 24282-CII of 2017

This is an application under Order 41 Rule 19 read with Section 151 CPC for restoration of the appeal.

For the reasons stated in the application, application is allowed.

The appeal is restored to its original number.

F.A.O. No. 2983 of 2013

The present appeal is against award dated 10.4.2013 passed by the Motor Accident Claims Tribunal, Ludhiana (for short 'The Tribunal').

MACT No. 140 of 29.10.2010 was decided by the Tribunal on 10.4.2013. The amount of Rs. 1,20,000/- was awarded to the unfortunate parents of Harish Kumar who died in a motor vehicular accident.

On the ill fated day of 17.9.2010 Harish Kumar aged 13 years was travelling in a tractor-trolley and was going to immerse the idol of Shri Ganesh Ji in the nearby river. The said tractor-trolley was hit by a rashly and negligently driven truck bearing registration No.PB-13-R-5727. As a result of the accident Harish Kumar suffered injuries and lost his life on the same day.

The appeal has been filed for enhancement of the compensation.

Learned counsel for the appellants argued that only a sum of Rs. 1,20,000/- has been awarded by the Tribunal. His grievance is that earning of the deceased was taken as Rs. 15,000/- per annum and out of that 50% was deducted for self expenses. His further grievance is that the amount awarded under the conventional heads is on the lower side.

Learned counsel for the Insurance Company defended the award and argued that the claimants were not able to prove on record that the deceased was earning something. He has further contended that he was a child, it is not expected that he was doing any job or earning on his own and as such the Tribunal has awarded sufficient amount.

The contention of learned counsel for the appellants deserves acceptance in view of the law laid down by Hon'ble the Apex Court in case of **Kishan Gopal and another Versus Lala and others 2014 (1) SCC 244,** wherein it was held as under: '

"18. Point Nos.2 and 3 are answered together in favour of the appellants for the following reasons:-

> The Tribunal having answered the contentious issue No.1, against the appellants in its judgment the same is concurred with by the High Court by assigning erroneous reasons and it has affirmed dismissal of the claim petition of the

appellants holding that the accident did not take place on account of the rash and negligent driving of the offending vehicle by the first respondent and therefore the contentious issue Nos. 1 and 2 are answered in the negative against the appellants and it has not awarded compensation in favour of the appellants.

Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious issue Nos. 1 & 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the appellants and also examined the claim of the appellants to award just and reasonable compensation in favour of the appellants as they have lost their affectionate 10 year old son. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No.6 states as under:

" 6. Notional income for compensation to those who had no income prior to accident:

....

(a) Non-earning person- RS.15,000/- p.a."

In the above decision, Hon'ble the Apex Court has held that in case of death of a child, help can be taken from Second Schedule of the Act and his income can be assessed as non-earning person as Rs. 15,000/- per annum.

Hon'ble the Apex Court in **Reshma Kumari and others Versus Madan Mohan and another, 2013(9) SCC 65** has held as under:

"34. If the multiplier as indicated in Column (4) of the table read with paragraph 42 of the Report in Sarla Verma is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a criss-cross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the table in Sarla Verma for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the table in Sarla Verma is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163A. As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Section 163A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the table in Sarla Verma should be followed."

In the above decision, Hon'ble the Apex Court has held that in case of death of a victim upto 15 years, a multiplier of 15 has to be applied.

Keeping in view the above decision, the Tribunal erred in granting a lump-sum amount rather than applying the multiplier method. The amount of compensation is re-assessed as under:

15,000 x 15 = 2,25,000/-

Further the Tribunal has only awarded a sum of

Rs. 2,000/- for funeral expenses. The same is enhanced to Rs. 15,000/-.

The award dated 10.4.2013 is modified to the extent that the amount awarded of Rs. 1,20,000/- is enhanced to Rs. 2,40,000/-.

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

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

November 20, 2017
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No