IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1942 of 2014 (O&M)

Date of Decision:2.11.2017

Future Generali India Insurance Co. Ltd.

.......Appellant

Versus

Parveen and others

......Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vishal Aggarwal, Advocate
for the appellant.

Mr. Vikram Bali, Advocate
for the respondents.

AVNEESH JHINGAN, J.

The present appeal has been filed by the Insurance Company against the award dated 4.1.2014 passed by the Motor Accidents Claims Tribunal, Panchkula (for short 'the Tribunal').

The only issue raised is that deceased was 31 years of age at the time of accident and the Tribunal has awarded 100% future prospects.

The matter with regard to awarding of future prospects has been authoritatively decided by Hon'ble the Apex Court in ***National Insurance Company Limited Versus Pranay Sethi and others*** ***Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017.*** The relevant part whereof reads as under:

"61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in *Santosh Devi* should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in *Sarla Verma,* a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in *Reshma Kumari*, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.

(vi)The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

The issue regarding future prospects was referred to a Larger Bench and Hon'ble the Apex Court, after considering the earlier decisions concluded that in the case like the present one where the deceased was 31 years of age at the time of accident, future prospects of 40% should be awarded.

The bare facts necessary for adjudication of the present appeal are that Irshad Khan met with a motor vehicular accident on 1.8.2011 and he lost his life. The claim petition was filed by the widow and parents of the deceased under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The Tribunal awarded a sum of Rs.34,60,972/- along with interest at the rate of 6% per annum. While awarding loss of dependency, future prospects of 100% were awarded.

In view of the decision of Hon'ble the Apex Court in ***National Insurance Company Limited's case (supra)***, learned counsel for the respondents No. 1 to 3-claimants stated that he has no objection if the loss of dependency is recalculated giving the future prospects of 40%.

Monthly salary 40% Future prospects 1/3 deduction for self expenses	13,382/- +5353 18735 x 12 =2,24,820/- 74,940 = 1,49,880/-
Multiplier of 16	1,49,880 x 16 Rs.23,98,080/-

Learned counsel for the appellant-Insurance Company could not dispute the proposition in view of the authoritative law referred above.

Since we are dealing under welfare legislation and dealing with such case, just and equitable amount has to be awarded to the claimant.

In view of the decision of Hon'ble Apex Court referred above, the amount to be awarded under the conventional heads has been fixed at Rs.70,000/-, i.e. Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate and Rs.40,000/- for consortium.

Since, in the present appeal, only Rs.35,000/- has been awarded under conventional heads and loss of dependency is being reduced, keeping in view the equity, the amount under the conventional heads are enhanced to Rs.70,000/-.

The award dated 4.1.2014 is modified to the extent that an amount of Rs.34,60,972/- awarded is reduced to Rs. 24,68,080/-.

The appeal is partly allowed in the above terms.

(AVNEESH JHINGAN)
JUDGE

2.11.2017
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Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No