IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2264-2015 (O&M)
Date of decision: 14.12.2017

Oriental Insurance Company Ltd. .... Appellant

Versus

Kamlesh and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Lalit Garg, Advocate
for the appellant-Insurance Company.

Mr.A.S.Randhawa, Advocate
for respondent No.7.

Ms. Amandeep Kaur, Advocate
for the claimants.

****

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 06.02.2015 passed by Motor Accidents Claims Tribunal, SAS Nagar (Mohali) (hereinafter referred to as the 'Tribunal').

The present appeal only pertains to the quantum of compensation.

The Insurance Company has filed the present appeal being aggrieved of the award on the ground that future prospects of 50% awarded are on the higher side and the amounts awarded under the conventional heads are also excess.

The contentions raised by learned counsel for the appellant are in consonance with 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 Hon'ble Apex Court has held that where the deceased was below 40 years of age and self employed or having fixed salary, 40% future prospects are to be awarded. It has been held that the amounts of Rs,70,000/- has 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. Hon'ble Apex Court held that no compensation is to be awarded for loss of love and affection.

The factual matrix of the present case is that Radhe Sham alias Radhe Shyam, aged 32 years, lost his life in a motor vehicular accident that occurred on 10.08.2013. He was going by his bicycle. His bicycle was hit by a rashly and negligently driven bus bearing registration No.PB-11-D-8791 (for short, 'the offending vehicle'). After the accident, he was taken to GMCH Hospital, Sector 32, Chandigarh where he died. FIR No.148 dated 11.08.2013 was registered.

In the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') filed by legal heirs of the deceased, the Tribunal awarded a sum of Rs.15,21,000/- along with interest @ 6% per annum if the payment is made within three months otherwise 9% per annum. The amount awarded includes Rs.1,00,000/- for loss of consortium, Rs.1,00,000/- for loss of love and care to the minor children and Rs.25,000/- for funeral expenses.

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

The parties have not disputed facts with regard to involvement of the offending vehicle, rash and negligent driving of the offending vehicle and the calculation of loss of dependency.

Learned counsel for the appellant has argued that 50% future prospects have been awarded which is on the higher side. He further contended that no amount for loss of love and care to the minor children should have been awarded and the amounts awarded for loss of consortium and funeral expenses are on the higher side.

Learned counsel for the claimants defended the award and argued that the deceased was just 32 years of age and hence 50% future prospects have rightly been awarded. She argued that no amount has been awarded for loss of estate.

The contention raised by learned counsel for the appellant deserves acceptance in view of the latest decision of Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra).***

In case of ***Hem Raj Vs. Oriental Insurance Company Ltd, in Civil Appal No. 19603 of 2017, decided on 22.11.2017*** it was held that 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. It is not a case of the claimants that the deceased was in a permanent job. In such circumstances, 40% future prospects has to be awarded.

The amounts under the conventional heads have to be awarded inconsonance with the latest decision of Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra).***

Hence, the compensation is recalculated as under :-

Annual income	Rs.72,000/-
Add 40% future prospects	Rs.28,800/-
Total income	Rs.72,000 +28,800=Rs.1,00,800/-
1/4th deduction for self expenses	Rs.25,200/-
Dependency	Rs.75,600/-
Applying multiplier of 16	Rs.12,09,600/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Total	Rs.12,79,600/-

The award dated 06.02.2015 is modified to the extent that the amount awarded by the Tribunal of Rs.15,21,000/- is reduced to Rs.12,79,600/-.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

14.12.2017
anju

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

2.Whether the order is reportable : Yes/No