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

FAO-4314-2015 (O&M)
Date of decision: 06.12.2017

Sheela Devi and others .... Appellants

Versus

Raghbir Singh and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.S.P.Chahar, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate
for respondent No.4-Insurance Company.

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Avneesh Jhingan, J.

The present appeal has been filed against the award dated 01.12.2014 passed by Motor Accidents Claims Tribunal, Panipat (hereinafter referred to as the 'Tribunal').

On 01.09.2011, Satbir Singh, aged 44 years, met with a motor vehicular accident when he was travelling in a Maruti Car Zen bearing registration No. HR-06W-9553. The said car was struck into rashly and negligently driven canter bearing registration No.HR-38D-3309 (for short, 'the offending vehicle'). As a result of the accident, he suffered grievous injuries and succumbed to the injury at the spot. FIR No.216 dated 02.09.2011 was registered at Police Station Safidon, District Jind.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by widow, two minor children and parents of the deceased.

The Tribunal, after appreciating the facts and considering the evidence, awarded a sum of Rs.7,72,000/- along with interest @ 7.5% per annum.

The present appeal has been filed by the claimants for enhancement of compensation.

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

There is no dispute on the facts of the case with regard to involvement of the offending vehicle, rash and negligent driving of the offending vehicle, age of the deceased and the multiplier applied.

Learned counsel for the appellants has argued that the income tax returns for assessment year 2009-10 and 2010-11 were duly produced before the Tribunal. The said returns were proved by the deposition of PW4-Sompal Sharma, Sr.Tax Assistant, Income Tax Office, Panipat. The Tribunal without giving any valid reason rejected the returns and considered the monthly earning of the deceased as Rs.6,000/-. His grievance is that the deceased was survived by four dependents i.e. widow, two minor children and mother. $1/4^{th}$ deduction for self expenses should have been made instead of $1/3^{rd}$. He further argued that no future prospects have been awarded and the amount awarded under the conventional heads is on the lower side.

Learned counsel for the Insurance Company has argued that the income tax returns are not worth reliance as these were not proved and no detail is evident from the returns that the income was from business and profession. He further argued that an amount of Rs.30,000/- has been awarded for loss of love and affection which as per 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*** cannot be awarded. He further argued that the dependency has rightly been calculated.

The contention raised by learned counsel for the appellants deserves acceptance. On the perusal of the record, it is evident that not only the income tax returns were produced, but the computation sheets filed with the Income Tax Department were also part of the record. From the perusal of the computation sheets for assessment year 2010-11 at page 121 of the record, it is evident that Rs.1,44,000/- was shown as profit and gains from the business and profession. Since the income was below taxable limits, no tax was payable.

In such circumstances, there was no occasion to reject the income tax returns. Even otherwise income tax returns which were duly proved is the safest yardstick for determining the earning of a person.

Keeping in view that he was earning Rs.12,000/- per month, the loss of dependency is re-calculated by taking his income as Rs.12,000/- per month.

As per the decision of the Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra)***, the future prospects are to be added for calculating the loss of dependency. The deceased was 44 years of age and

25% future prospects are to be added. The deduction for self expenses is to be made to the extent of 1/4th as the deceased was survived by four dependents.

The decision of the Hon'ble Apex Court in case of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77*** has held that where dependents are 4 to 6, 1/4th deduction is to be made.

Rupees one lakh has been awarded under the conventional heads which includes Rs.30,000/- for loss of love and affection. In view of the latest decision of the Hon'ble Apex Court in ***National Insurance Company Ltd.'s case (supra),*** the conventional heads are to be restricted to Rs.70,000/- (i.e. Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate and Rs.40,000/- for loss of consortium). No amount can be awarded for loss of love and affection. While calculating the compensation, the conventional heads would be restricted to Rs.70,000/-.

For the reasons mentioned above, the compensation is recalculated as under :-

Monthly income	Rs.12,000/-
Add 25% future prospects	Rs.3000/-
Total income	Rs.12,000+3000=Rs.15,000/-
Annual income	Rs.15,000x12=Rs.1,80,000/-
1/4th deduction for self expenses	Rs.45,000/-
Dependency	Rs.1,35,000/-
Applying multiplier of 14	Rs.18,90,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Total	Rs.19,60,000/-

The award dated 01.12.2014 is modified to the extent that the amount awarded by the Tribunal of Rs.7,72,000/- is enhanced to Rs.19,60,000/-.

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

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

06.12.2017
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1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes