IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A. O. No. 5238 of 2015 (O&M)

Date of Decision:20.12.2017

National Insurance Company Ltd.

.......Appellant

Versus

Karnail Kaur and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.C. Kapoor, Advocate
for the appellant.

Ms. Ekta Thakur, Advocate
for respondents No. 1 to 3.

Ms. Charanjit Kaur, Advocate
(Amicus-curiae) for
respondents No. 1 to 3.

AVNEESH JHINGAN, J.

The present appeal is against the award dated 2.5.2015 passed by the Motor Accidents Claims Tribunal, Chandigarh (for short 'the Tribunal').

Amar Singh aged 62 years lost his life in a motor vehicular accident on 17.10.2013. He was travelling in a tractor trolley bearing registration No.PB-42-8477. The said tractor trolley was hit by a rashly and negligently driven Swift Dzire Car bearing registration No.HP-08A-1339. In the accident, Amar Singh suffered grievous injuries and was removed to PGIMER, Chandigarh, where he succumbed to his injuries. FIR No. 99 was registered at Police Station Mullanpur Garibdass, District Mohali.

Claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the legal heirs of the deceased.

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In the claim petition, it was averred that the deceased was an agriculturist, owning agriculture land and was earning Rs.10,000/- per month. Since, monthly earning of the deceased was not substantiated, the Tribunal assessed the earning at Rs.6000/- per month and awarded a sum of Rs.5,28,000/- as compensation alongwith interest at the rate of 7.5% per annum. The said amount awarded included Rs.25,000/- for loss of estate, Rs.25,000/- for funeral expenses and Rs.1,00,000/- for loss of consortium.

The Insurance Company had filed the present appeal being aggrieved of the quantum of compensation. It would be important to note that at the time of issuance of notice of motion, stay of recovery beyond Rs.3,65,000/- was granted.

I have heard learned counsel for the parties and perused the paper book and the relevant documents produced by the counsel.

The parties have not disputed the involvement of the offending vehicle, rash and negligent driving of the offending vehicle and the multiplier applied.

Learned counsel for the appellant argued that the deceased was survived by a widow and two major sons aged 40 and 42 years. Tribunal erred in making 1/4th deduction for self expenses. He argued that the amount of Rs.1,50,000/- awarded under the conventional heads is on the higher side.

Learned counsel for the respondents argued that the deceased was an agriculturist and the Tribunal erred in assessing the monthly earning of the deceased at Rs.6000/- per month. He further argued that it was deposed that sons of the deceased were unemployed and hence ½ half deduction for self expenses should not be made. She defended the amount

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awarded under conventional heads.

The contention raised by learned counsel for the appellant regarding deduction to be made for self expenses and the amount awarded under conventional heads deserves acceptance. Apart from mere self serving statement, nothing has come on record to establish that 40-42 years sons were dependent on the deceased.

Even otherwise, the stand taken in the claim petition as well as in the appeal is that the deceased owned agricultural land and he was cultivating the same. In such circumstance, it cannot be expected that major sons being unemployed were dependent upon the deceased. In such circumstance, ½ half deduction should have been made for self expenses.

Hon'ble the Apex Court in National Insurance Company ***National Insurance Company Limited Versus Pranay Sethi and others Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017***, held that under conventional heads Rs.70,000/- has to be awarded i.e. Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses respectively.

Hence, the amount awarded of Rs.1,50,000/- has to be made in inconsonance with the decision of Hon'ble the Apex Court and will be reduced to Rs.70,000/-.

In the present case, since just and equitable compensation is to be awarded, Rs.6000/- monthly income assessed by the tribunal is not in accordance with the facts of the present case. An agriculturist cannot be in every case equated to an unskilled labourer. It would be appropriate to assess the earning of the deceased as Rs.7000/- per month.

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For the reasons given above and the case law cited above, the compensation is recalculated as under:

Monthly income	Rs.84000/-
½ (half)deduction for self expenses	Rs.42000/-
multiplier of 7 ---42000 x 7	Rs.2,94,000/-
Conventional heads	Rs.70,000/-
Total	Rs.3,64,000/-

In the facts and circumstance of the case, since there was stay beyond Rs.3,65,000/-, the amount awarded is rounded off to Rs.3,65,000/-.

Accordingly, the present appeal is allowed in part and the amount awarded by the Tribunal as Rs.5,28,000/- is reduced to Rs.3,65,000/-.

(AVNEESH JHINGAN)
JUDGE

20.12.2017
reema

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No

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