IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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FAO No.4616 of 2016 (O&M)
Decided on :29.11.2017

Sanjiv Saini and others

... Appellants

Versus

Amrik Singh and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.N.K.Nagar, Advocate
for the appellants.
Mr.Gopal Mittal, Advocate for respondent No.3.

Avneesh Jhingan, J. (Oral)

The present appeal has been filed against the award dated 3.12.2014 passed by Motor Accidents Claims Tribunal, Chandigarh (for short 'the Tribunal').

On 23.5.2012, Usha Rani aged 37 yrs, lost her life in a motor vehicular accident. Her Activa Honda Scooter bearing registration No.CH-04-J-6164 was hit by rashly and negligently driven Indigo car bearing No.HR-49B-0510. As a result of the accident, she fell down in a deep gorge. She was taken to the hospital but she was declared brought dead. FIR No.129 dated 23.5.2012 was registered at Police Station Pinjore.

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

The Tribunal after appreciating the facts and considering the witnesses and evidence, awarded a sum of Rs.19,05,000/- along with interest at the rate of 7.5 % per annum. The amount included Rs.2,25,000/- awarded under the conventional heads.

The facts regarding involvement of the offending vehicle, rash and negligent driving of the offending vehicle, age of the deceased, deduction for self expenses and multiplier applied have not been disputed by the parties.

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

Learned counsel for the appellants argues that Income Tax Return for the assessment year 2010-11 was produced as Ex.P-2 before the Tribunal. In the said return, gross income was shown as Rs.16,000/- per month but the Tribunal has wrongly taken her income as Rs.14,000/- per month. His grievance is that no future prospects have been awarded by the Tribunal.

Learned counsel for the Insurance company defended the award and argued that the monthly income of the deceased has been correctly assessed by the Tribunal. He further argued that already excess amount has been awarded under the conventional heads and hence, no further enhancement is called for.

The contention raised by learned counsel for the appellants that the Tribunal erred in taking the monthly earning of the deceased as Rs.14,000/- is bereft of merits and has to be rejected.

From perusal of the Income Tax Return split of gross income is evident. The deceased was earning Rs.14,000/- from business and

Rs.2000/- was her interest income. While assessing the loss of dependency, it is her monthly earning which is to be considered i.e. Rs.14,000/- per month. Rs.2000/- is her interest income which may be from the bank or other sources where the money has been invested. The said income remains as it is even after her death. Income of Rs.2000/- per month will continue to flow to the dependents.

In such circumstances, no fault can be found in the award of the Tribunal so far as it assessed the monthly income of the deceased as Rs.14,000/-

Contention of learned counsel for the appellants that no future prospects has been awarded is squarely covered by the decision of the Hon'ble Supreme Court in case of ***National Insurance Company Limited*** Vs. *Pranay Sethi and Ors*, Special Leave Petition (Civil) No.25590 OF 2014, decided on 31.10.2017. The Hon'ble Apex Court has held as under:-

> "(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."

In the above decision, it has been held that in case of self employed and person having fixed salary, 40% future prospects on the established income would be awarded where the deceased is below the age of 40.

Since the compensation is being re-calculated by adding future prospects in order to arrive a just and equitable compensation, the amount awarded under conventional heads will have to be reconsidered.

In case of National Insurance Company Ltd. (supra), Hon'ble Supreme Court has restricted the amount to be awarded under the conventional heads to Rs.70,000/- (loss of estate- Rs. 15,000/- loss of consortium-Rs. 40,000/- and funeral expenses Rs. 15,000/-.)

Keeping in view the law laid down by the Apex Court and the facts mentioned above, the compensation is recalculated as under:-

Sr.No.	**Heads**	**Amounts**
1	Annual income	Rs.14000/- X 12 = Rs.1,68,000/-
2	40% of annual income is added towards future prospects	Rs.1,68,000 + Rs.67200/- =Rs.2,35,200/-
3	1/3rd deduction for self expenses	Rs.2,35,200 -Rs.78,400/- =Rs.1,56,800/-
4	Applying Multiplier of 15	Rs.1,56,800/- X 15 = Rs.23,52,000/-
5	Loss of estate	Rs.15,000/-
6	Loss of consortium	Rs.40,000/-
7	Funeral expenses	Rs.15,000/-
	Total	Rs.24,22,000/-

The award dated 3.12.2014 is modified to the extent that amount awarded of Rs.19,05,000/- is enhanced to Rs.24,22,000/-.

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

The appeal is partly allowed in the above said terms.

[Avneesh Jhingan]
Judge

29.11.2017
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No