IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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**FAO No.6025 of 2015**
Decided on :29.11.2017

*Jaswinder Kaur and others*

*... Appellants*

*Versus*

*Sandeep Sharma and others*

*.. Respondents*

**CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN**

Present : Mr.Chandandeep Singh, Advocate
for the appellants.
Mr.Gopal Mittal, Advocate
for respondent No.3-Insurance Company.

***Avneesh Jhingan, J. (Oral)***

The present appeal raises issue of calculating loss of dependency in case where Ex-Army personnel lost his life in a motor vehicular accident.

The dispute is only to the extent that the Tribunal has not correctly deducted the family pension from the pension and thereafter, erred in calculating the loss of dependency. The other issue involved is that the deceased was agriculturist and was also indulging in dairy farming but same has not been considered while awarding compensation.

The factual matrix in the appeal are that on 1.6.2013, Palwinder Singh @ Parminder Singh was going on a scooter bearing registration No.PB-10AT-4296. The said scooter was struck by rashly and negligently driven truck bearing No.PB-08-CB-7587. As a result of the accident, Palwinder Singh died on the spot. FIR No.93 dated 1.6.2013 was registered at Police Station Samrala.

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

The Tribunal held that the major sons were not dependent upon the deceased and awarded compensation of Rs.6,53,000/- along with interest at the rate of 6% per annum. The amount awarded includes the amount of Rs.25,000/- under the conventional heads plus one lac as loss of consortium.

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

Learned counsel for the appellants has argued that it was proved on record that the deceased was getting pension of Rs.11,097/- and after his death, the family was getting pension of Rs.6300/-. His grievance is that the Tribunal wrongly took the amount of Rs.4000/- per month for calculating loss of dependency. His further grievance is that it was proved that he was owning agricultural land and was selling milk and that aspect has been ignored by the Tribunal.

Learned counsel for the Insurance company argues that it has not been established that what was the earning of the deceased from the dairy business and that the agricultural land remains as it is, even after his death. He could not raise the serious issue with regard to calculation mistake by the Tribunal in arriving at Rs.4000/- which should have been Rs.4797/-. He further argued that already excess amount has been awarded under the conventional heads and hence, there is no need for further enhancement.

From the perusal of the award itself, it is evident that loss of dependency should have been calculated at the rate Rs.4797/-. Loss of income was the pension deceased was receiving, minus the family pension received by the family. It is further to be considered that it has come on record that he was owning agricultural land and was indulged in dairy farming business. Though it has not been proved that he himself was cultivating the land or what was his earning from the dairy farming. Be that as it may, even if the land holding was small and it has not come on record that he was cultivating the land himself, his managerial skill shall be missed. It cannot be ruled out that the deceased was having atleast some monthly income from the dairy business. Keeping in view the facts, it would be appropriate if the loss of dependency is calculated at the rate of Rs.5500/- per month. Since just and equitable amount of compensation is to be arrived at, the amount under the conventional heads is to be restricted to Rs.70,000/- as per decision of the Hon'ble Supreme Court in **National Insurance Company Limited** Vs.**Pranay Sethi and Ors**.,Special Leave Petition (Civil) No. 25590 OF 2014 decided on 31.10.2017.

Learned counsel for the appellants could not raise serious objection for restricting conventional heads to Rs.70,000/- The compensation is recalculated as under:-

Rs.5500 X 12 X 11= Rs.7,26,000/-
Funeral expenses =Rs.15,000/-
Loss of consortium – Rs.40,000/-
Loss of estate -Rs.15,000/-

The award dated 30.4.2015 is modified to the extent that the amount awarded of Rs.6,53,000/- is enhanced to Rs.7,96,000/-.

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.

This appeal is allowed in the aforesaid terms.

**[ Avneesh Jhingan ]**
**Judge**

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