IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6027-2015 (O&M)
Date of decision: 13.12.2017

Sardaro Devi and others .... Appellants

Versus

Shiv Kumar and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Arun Sharma, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No.2-Insurance Company.

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Avneesh Jhingan, J.

The present appeal has been filed against the award dated 20.03.2015 passed by Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as the 'Tribunal').

Bachna Ram @ Bachan Singh, aged 66 years, lost his life in a motor vehicular accident that occurred on 04.10.2014. He along with his nephew was standing on a kachha portion of the road near Giandeep School, village Karasan. A Maruti Swift VDI car bearing registration No.HR-04-E-2511 came and hit Bachna Ram @ Bachan Singh. The said car was being driven rashly and negligently. He suffered multiple injuries. He was taken to General Hospital, Naraingarh but he was declared brought dead.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the widow and two major sons of the deceased aged 42 and 46 years.

The Tribunal awarded a sum of Rs.3 lakhs along with interest @ 7.5% per annum. The amount awarded includes Rs.10,000/- for funeral expenses and Rs.50,000/- for loss of consortium and loss of love and affection.

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

The parties have no dispute with regard to involvement of the offending vehicle, rash and negligent driving of the offending vehicle, age of the deceased, multiplier applied and even the deduction made for self expenses.

Learned counsel for the appellants has argued that the documents were placed on record to show that the deceased was owner of agricultural land and was also taking land on contract basis. In such circumstances, the Tribunal erred in assessing his monthly earning as Rs.6,000/-. His grievance is that the amount awarded for funeral expenses is on the lower side and no amount has been awarded for loss of estate.

No other argument has been raised by learned counsel for the appellants.

Learned counsel for the Insurance Company has argued that the claimants failed to establish the earning of the deceased. She further argued that the agricultural land will remain as it is even after his death. Her grievance is that the amount of Rs.50,000/- awarded for loss of consortium and loss of love and affection is on the higher side. She contended that the deceased is survived by widow and two major son, who are 42 and 46 years of age.

The income assessed by the Tribunal Rs.6,000/- per month cannot be faulted in the facts of the present case. No doubt, it has come on record that the deceased was owner of agricultural land and was also taking land on contract. These documents will not establish his earning. It would be pertinent to note that no 'J' forms under Punjab Agricultural Produce Markets Act, 1961 (as applicable to Haryana) were produced by the claimants to show that how much agricultural produce was sold. Even otherwise, the age of the sons shows that they would be actively participating in the agricultural work. The agricultural land would remain as it is after the death of the deceased. Taking the land on contract basis can continue after the death of Bachna Ram. The managerial and the physical work done by the deceased would not be there. In absence of any evidence on record, the Tribunal had to arrive at a figure on a guess work. One of the safest yardstick for determining the earning is to rely upon the minimum wages prevalent at the time of the accident. During the said period, even a skilled labour was getting less than Rs.6,000/- per month. In such circumstances, it would not be appropriate to disturb the said earning.

The contention raised by learned counsel for the appellants regarding conventional heads deserves acceptance.

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*** has held that 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. It has further been held that no compensation is to be awarded for loss of love and affection.

In the present case, Rs.50,000/- has been awarded for loss of consortium and loss of love and affection and Rs.10,000/-has been awarded for funeral expenses. The compensation awarded under the conventional heads is enhanced to Rs.70,000/- and is made inconsonance with the Hon'ble Apex Court order by making it Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium

The award dated 20.03.2015 is modified to the extent that the amount awarded by the Tribunal of Rs.3,00,000/- is enhanced to Rs.3,10,000/-.

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

13.12.2017
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1.Whether the order is speaking/reasoned: Yes/No

2.Whether the order is reportable : Yes/No