IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

218

FAO No.6117 of 2015 (O&M)
Decided on : 13.11.2017

Kamlesh and others

... Appellants

Versus

Vijay Singh and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Adit Kumar Sharma, Advocate for
Mr.R.D.Yadav, Advocate for the appellants.

Mr.Lalit Garg, Advocate for respondent No.3-Insurance Co.

Avneesh Jhingan, J. (Oral)

The present appeal is against the award dated 5.5.2015 passed by Motor Accidents Claims Tribunal, Rewari (for short, 'the Tribunal').

On 19.4.2014, Madan Lal aged 40 years met with a motor vehicular accident. He was driving the motorcycle bearing registration No.HR-36R-5072. The said motorcycle was banged by a truck bearing registration No.RJ-32GA-4611 (for short, 'the offending vehicle). As a result of the accident, Madan Lal suffered grievous injuries and succumbed to injuries on his way to the hospital. FIR No.117 dated 19.4.2014 was registered at Police Station City Rewari.

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

The Tribunal after considering the evidence and witnesses, awarded a sum of Rs.9,40,000/- along with interest @ 6% per annum.

The amount awarded includes a sum of Rs.1,30,000/- towards conventional heads.

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

There is no dispute on the fact of the case with regard to involvement of the offending vehicle and the rash and negligent driving of the offending vehicle.

Learned counsel for the appellants argues that the compensation awarded by the Tribunal is on the lower side. The income assessed of Rs.6000/- per month, is also on the lower side as the deceased was a skilled mason and was earning Rs.18,000/- per month.

Learned counsel for the Insurance company resisted the enhancement and rather argues that the amount awarded is on the higher side. His grievance is that Rs.1,30,000/- has been awarded under the conventional heads. He further contended that the claimants were not able to prove the earning of the deceased.

The claim was made that the deceased was a skilled mason and was earning Rs.18,000/- per month. There was no evidence produced before the Tribunal to substantiate the said claim. In absence of any such material, the guess work has to be there for computing the compensation. One of the safest yardstick available with the Tribunal to rely upon was the minimum wages prevalent at the time of accident. The accident occurred on 19.4.2014 and the monthly wages for un-skilled labourer at that time was Rs.5547/- and the Tribunal has already been taken into consideration the monthly income of the deceased at Rs.6000/-. In such situation, no grievance can be raised by the appellants.

As per latest decision of the Hon'ble Apex 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, it has been held that an amount of Rs.70,000/- under conventional heads has to be awarded (Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses, and Rs.40,000/- for consortium.

In the present case, a sum of Rs.1,00,000/- has been awarded for loss of consortium, Rs.25,000/- for funeral expenses and Rs.5,000/- for loss of estate. Since the income of the deceased assessed was on the guess-work, it would not be appropriate to reduce the compensation awarded by the Tribunal. Upholding the award passed by the Tribunal, the amount of conventional heads would compensate in arriving at just and reasonable amount for loss of dependency. Though it may not have been proved on record that he was a skilled mason but such a claim was made.

In such circumstances, since the monthly earning of a unskilled labouer has been taken, the excess amount awarded for conventional heads would be a compensatory amount for calculating the loss of dependency.

The Apex Court in case ***D.M.,Oriental Insurance Co. Ltd.*** Vs. ***Swapna Nayak and others***, 2017 (3) SCC 598 has held as under:-

> "18) When we find that under one head, reasonable amount has been awarded and under another head, nothing has been awarded though it should have been so awarded and at the same time, we notice that eventual figure of the award of

> compensation payable to the claimants appears to be just and reasonable then in such eventuality, we do not consider it proper to interfere in such award in our appellate jurisdiction under Article 136 of the Constitution. In other words, if by applying the tests and guidelines, we find that overall award of compensation is just and fair, then, in our view, such award deserves to be upheld in claimants' favour. We find it to be so in the facts of this case having taken note of all relevant facts and circumstances of the case."

As per the above decision, if reasonable amount has been awarded under one head and less or no amount has been awarded under the other head, it would not be a case of interference by this Court.

In the present case, since the amount awarded under the conventional heads is already on the higher side, which would compensate the amount awarded for loss of dependency. In such circumstances, there is no merit in the appeal and the same is dismissed.

13.11.2017 [**Avneesh Jhingan**]
sd **Judge**

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