IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 776 of 2014 (O&M)
Date of Decision:- 08.12.2017

Meena & Ors. ....Appellants

Versus

Gurman Singh & Ors. ...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Takhan, Advocate, for the appellants.

Mr. Tushar Gera, Advocate, for respondent Nos. 1 and 2.

Mr. Suvir Dewan, Advocate, for respondent No.3 – Insurance Co.

AVNEESH JHINGAN, J. (Oral)

Present appeal has been filed against award dated 15.07.2013 passed by Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal').

There was a motor vehicular accident occurred on 28.09.2011. Rajesh Kumar, aged 39 years was travelling on his motor-cycle. The said motor-cycle was hit by rashly and negligently driven TATA ACE bearing registration No. HR-62-1791 (for short,'the offending vehicle'). As a result of the accident, Rajesh Kumar suffered multiple injuries and died on the spot.

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 evidence produced awarded a sum of Rs.5,80,000/- along with interest @7.5% per annum. The said amount awarded included a sum of Rs.20,000/- for loss of consortium and Rs.20,000/- for funeral expenses.

The present appeal has been filed for enhancement of the compensation.

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

Learned counsel for the appellants argued that the income assessed of ₹4000/- per month was on the lower side. He was working as a driver and a salary certificate was also produced. He further argued that the amounts awarded under the conventional heads are on the lower side and no amount has been awarded for loss of estate. He futher argued that no future prospects have been awarded.

Learned counsel for the respondents defended the award and argued that the claimants were not able to substantiate the salary certficate. The witness, Uday Ram PW-4, who appeared to prove Exhibit P/6, was not having any record to authenticate the said salary certicate. It has further been contended that already excess amount has been awarded for funeral expenses.

There is no dispute raised on the facts by either of the parties i.e. involvement of the offending vehicle, rash and negligent driving of the offending vehicle, age of the deceased, multiplier applied and on deductions made for self-expenses.

The deceased was claimed to be working as a driver. Though, it was not proved on record that what was his earning. Only a salary certificate was produced which was found not worth reliance. It has not been rebutted that he was a driver. In such circumstances, even if the salary mentioned in the certficate was not be accepted, the safest yard stick to be followed was that the minimum wages prvelent at that time in the State of Haryana should have been relied upon. During the relevant time, for skilled labourer the minimum salary was Rs.5163/-. The same is rounded off for calculation purposes to Rs.5200/-.

Since there is no dispute with regard to deductions for self-expenses and multiplier applied, the loss of dependency is recalculated later in the order after awarding future prospects of 40% as per the decision of Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Parney Sethi, SLP (Civil) 25590 of 2014,*** decided on 31.10.2017.

The contentions raised by learned counsel for the appellants regarding greivance with regard to the conventional heads deserve acceptance in view of the law laid down by the Hon'ble Apex Court in ***National Insurance Co. Ltd.*** (Supra).

The amounts awarded under the conventional heads are made in consonance with the decision of Hon'ble the Apex Court and compensation is also awarded for loss of estate. The total sum of Rs.70,000/- is awarded under conventional heads (i.e. Rs.15,000/- for loss of funeral expenses, Rs.15,000/- for loss of estate and Rs.40,000/- of loss of consortium). Recalculation of compensation is as under:-

Rs.5200/- + 40% future prospects	= Rs.7280/-
Annual Income = Rs.7280/- x 12	= Rs.87360/-
1/4th deduction for self-expenses	= Rs.21,840/-
Total	= Rs. 65,520/-
Applying multiplier of 15	

Rs. 65,520/- x 15	= Rs.9,82,800/-
Funeral expenses	=Rs. 15,000/-
Loss of estate	=Rs. 15,000/-
Loss of consortium	=Rs. 40,000/-
Total	= Rs.10,52,800/-

The award dated 15.07.2013 is modified to the extent that the amount awarded of Rs.5,80,000/-awarded by the Tribunal is enhanced to Rs. 10,52,800/-.

The claimants would be entitled to the enhanced amount along with interest @6% per annum from the date of filing of the claim petition till realisation.

The appeal is partly allowed in the aforesaid terms.

December 08, 2017 **(AVNEESH JHINGAN)**
tripti **JUDGE**

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