IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 6362 of 2016 (O&M)
Date of Decision:- 06.12.2017

Pooja & Ors. ....Appellants

Versus

Ram Narain & Ors. ...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Tarun Sharma, Advocate, for
Mr. P.S. Jammu, Advocate, for the appellants.

Mr.Vinod Gupta, Advocate, for respondent No.4.

AVNEESH JHINGAN, J. (Oral)

Present appeal has been filed against award dated 29.02.2016 passed by Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal').

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 – Ramesh Kumar, aged 25 years. The Tribunal awarded a sum of Rs.14,53,000/- along with interest @7.5% per annum. The said amount includes an amount of Rs.25,000/- for loss of consortium & mental pain and suffering, love and affection, Rs.10,000 for funeral expenses and transportation, etc and Rs.50,000/- for loss of love and affection.

The factual matrix of the present case are that a motor vehicular accident occurred on 15.06.2014. The deceased was travelling in Mahindra Bolero jeep bearing registration No. HR-20AB-9534. The said Mahindra Bolero jeep was struck by rashly and negligently driven truck bearing registration No. HR-57-7768. As result of the accident Bolero fell down in the pits and turned turtle. Ramesh Kumar suffered multiple injuries and was taken to CHC, Ellenabad, District Sirsa. Unfortunately he succumbed to the injuries in the hospital. FIR No. 178, dated 15.06.2014 was registered at Police Station Ellenabad, District Sirsa, Haryana

I have heard learned counsel for the parties; perused the paper-book and the relevant documents produced by them.

There is no dispute by either of the parties with regard to involvement of the offending vehicle, rash and negligent driving of the offending vehicle, salary of the deceased and deductions made for self-expenses.

Learned counsel for the appellants argued that the deceased was doing a job of Waiter with Bistro Hospitality Private Limited, New Delhi. The HR Executive Atul Kumar Singh deposed before the Tribunal to state that deceased was employed with the said company as waiter and was drawing salary of Rs.9501/- per month. He further stated that the deceased was to retire from the company at the age of 58 years as per the norms and was supposed to get 10% increment per annum. The grievance of the counsel for the appellant is that no future prospect is awarded. He further contends that only Rs.25,000/- has been awarded for loss of consortium & mental pain and suffering, love and affection, Rs.10,000 for funeral expenses and transportation, etc , which is on the lower side and no amount has been awarded for loss of estate.

Learned counsel for the insurance company has argued that the deceased was not a government employee and therefore, he cannot be awarded future prospects of 50%, but he should be awarded future prospects of 40%. He further contended that an amount of Rs.50,000/- has been awarded of loss of love and affection, which should not have been awarded. He further argued that the date of birth of the deceased has come on record as 07.05.1989 and the accident occurred on 15.06.2014. His contention is that a multiplier of 17 should be applied as he should not be treated in the age group of 20-25.

The contention of learned counsel for the appellants with regard to awarding future prospects deserves acceptance and has not been disputed by the counsel for the insurance company. The only dispute is that since the deceased was 25 years of age whether he has to be awarded 40% future prospects or 50% future prospects.

The Hon'ble Apex Court in case of ***National Insurance Co. Ltd. Vs. Parney Sethi, SLP (Civil) 25590 of 2014,*** decided on 31.10.2017 has categorised awarding of future prospects in two categories. The first category is where a deceased had a permanent job. In case of the deceased having a permanent job, 50% addition to the actual salary is to be made if the deceased is below 40 years of age. The second category is where the deceased was self-employed or on a fixed salary, in that case 40% future prospects has to be awarded, in case where deceased is below 40 years of age.

It has been proved on record that the deceased was employee of Bistro Hospitality Private Limited, New Delhi. His age of retirement was fixed. He was supposed to get 10% increment per annum on his last drawn salary. The said evidence has not been rebutted, in such circumstances 50% future prospects are awarded.

The contention raised by learned counsel for the appellants with regard to awarding of amount for loss of estate and for increasing the amount for loss of consortium and funeral expenses is to be partially accepted.

As per decision of Hon'ble Apex Court in ***National Insurance Co. Ltd.*** (Supra) Rs.70,000/- is to be awarded under the 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). In the said decision it has been held that no amount can be awarded for loss of love and affection.

In the present case Rs.50,000/- has been awarded for loss of love and affection. Since a just and equitable compensation is to be awarded, the amount for conventional heads is restricted to Rs.70,000/- (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). The amount awarded for love and affection cannot be upheld.

The contention raised by the learned counsel for the insurance company that the multiplier of 18 has wrongly been applied whereas multiplier of 17 should have been applied cannot be accepted. Firstly there was no such issue raised by the insurance company before the Tribunal. Secondly there is no cross-appeal or cross-objections filed. Thirdly, even on merits if the table given in ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., 2009 (6) SCC 121*** is perused, it would be evident that it is not a table which gives overlapping age groups. It gives the age group as 21-25, 26-30, 31-35. Obvious meaning is that the person who was 26 years of age will come within the age group of 26-30. In such circumstances, multiplier of 18 has rightly been applied.

Since the loss of dependency calculated by the Tribunal is not in dispute, 50% of the said amount is awarded as future prospects i.e. Rs.6,84,000/-. The amount of conventional heads as discussed above are restricted to Rs.70,000/-.

The award dated 29.02.2016 is modified to the extent that the amount of Rs.14,53,000/- awarded by the Tribunal is enhanced to Rs.21,22,000/-.

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 06, 2017 **(AVNEESH JHINGAN)**
tripti **JUDGE**

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