

FAO No. 6897 of 2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6897 of 2016 (O&M)

Date of Decision: 5.12.2017

Smt. Manisha and others

.....Appellants

Versus

Manoj Chaudhary and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. Amit Jaiswal, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 6.4.2016 passed by the Motor Accidents Claims Tribunal, Rewari (for short 'the Tribunal').

On 2.6.2015 Naresh Kumar aged 39 years was standing on the edge of Banglore Tumkar National Highway No.4, when a rashly and negligently driven truck bearing registration No. HR-46-C-1507, dashed into him, as a result of which he lost his life. FIR No. 281 dated 3.6.2015 was registered at Police Station Madanayakanahali.

The 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 awarded a sum of Rs. 13,88,000/- alongwith interest at the rate of 8% per annum. The said amount included a sum of Rs. 3,50,000/- under the conventional heads. A direction was given that if the amount is not deposited within three months, then it will fetch interest at the rate of 8.5%

per annum.

The facts have not been disputed in the present case by either of the parties with regard to involvement of the offending vehicle, rash and negligent driving of offending vehicle and calculation of loss of dependency.

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

Learned counsel for the appellants has contended that the Tribunal has not awarded any future prospects, while awarding the compensation. He further argued that future prospects should have been on the established income.

No other issue was raised.

Learned counsel for the Insurance Company defended the award and stated that since already an amount of Rs.3,50,000/- has been awarded under various heads, there is no need of any further enhancement as these heads have to be restricted now to Rs.70,000/-. He pleaded that since the claimants have already been compensated under the conventional heads, in such circumstance, nothing should be awarded for future prospects.

The contention raised by learned counsel for the appellants deserves acceptance in view of the latest decision of Hon'ble the Apex Court in **National Insurance Company Limited Versus Pranay Sethi and others Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017.**

In the said decision it has been held that 40% future prospects should be awarded where the deceased is below 40 years of age and was

having a fixed salary.

Hon'ble the Apex Court in its latest decision in **Hem Raj Versus Oriental Insurance Company Ltd. (in Civil Appeal No. 19602 of 2017 decided on 22.11.2017)** has held that future prospects is to be awarded, even where the income is assessed relying upon the minimum wages prevalent at that time, in view of the aforesaid decision of Hon'ble Apex Court.

While calculating future prospects, it has come to notice that there is a mistake in calculation while passing the award by the Tribunal. Monthly salary was taken as Rs.7800/- and 1/4th deduction was made for self expenses. The balance comes to Rs.5850/-, Annual income is thus 5850 x12 = 70,200/-. The Tribunal, by mistake, has taken it as Rs.69,200/-. Rectifying the said mistake, a multiplier of 15 is applied and the amount comes to Rs.10,53,000/- for loss of dependency and 40% is awarded as future prospects and the amount comes to Rs.4,21,200/-.

The contention raised by insurance Company regarding conventional heads deserves acceptance.

The Tribunal has awarded a sum of Rs. 3,50,000/- i.e. Rs.1,00,000/- for loss of consortium, Rs.1,00,000/- each for loss of care and guidance to minor child and Rs.25,000/- for loss of estate and love and affection and Rs.25,000/- on account of last rites.

Hon'ble the Apex Court in **Pranay Sethi's case (supra)** has held that Rs.70,000/- has to be awarded under conventional heads i.e. Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses.

In order to arrive at just and equitable compensation, the said

amount is restricted to Rs.70,000/- as per the aforesaid decision of Hon'ble the Apex Court.

The award dated 6.4.2016 is modified to the extent that the amount of Rs. 13,88,000/- awarded by the Tribunal, is enhanced to Rs.15,44,200/-. The claimants shall be entitled to enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the aforesaid terms.

5.12.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No