IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7783 of 2016 (O&M)

Date of Decision:21.11.2017.

National Insurance Company Ltd.

.......Appellant

Versus

Priyanka and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gopal Mittal, Advocate
for the appellant.

Mr. S.S. Verma, Advocate
for respondents No. 1 and 2.

Mr. Deepak Girotra, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.

The present appeal filed by the Insurance Company challenges the quantum of compensation awarded to the children of Ombir, vide award dated 19.9.2016 passed by the Motor Accidents Claims Tribunal, Jhajjar (for short 'the Tribunal').

Ombir aged 50 years, lost his life in a motor vehicular accident that occurred on 10.2.2016. The accident occurred due to rash and negligent driving of vehicle bearing registration No.HR-12-W-4870 (for short 'the offending vehicle'). FIR was registered of the said accident.

Un-married daughter and a minor son filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal awarded a sum of Rs.29,25,000/- along with interest at the rate of 7.5% per annum.

Aggrieved of the said award, the present appeal has been filed by the Insurance Company challenging the income assessed by the Tribunal, multiplier applied; 50 % future prospects and amounts awarded under conventional heads.

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

There is no dispute by the parties with regard to the involvement of the offending vehicle and rash and negligent driving of the offending vehicle.

Learned counsel for the appellant argued that the income assessed by the Tribunal of Rs.15,000/- per month is on higher side as the claimants failed to prove the earning of the deceased. He argued that deceased was 50 years of age as held by the Tribunal and in such circumstance, multiplier of 15 has been wrongly applied. His contention is that 50% future prospects has wrongly been applied rather 25% future prospects should have been awarded. His grievance is against the amount awarded of Rs.2,25,000/- i.e. Rs.2,00,000/- for loss of love and affection and Rs.25,000/- for funeral and transportation expenses.

Learned counsel for respondents No. 1 and 2 contended that the deceased was holding a heavy vehicle driving licence and therefore, the Tribunal has rightly assessed the monthly earning as Rs.15,000/-. He contended that the deceased was not 50 years of age but 44 years. He relied upon date of birth mentioned in the driving licence as Ex.P8 wherein date of birth has been mentioned as 14.4.1971 and hence, the Tribunal has rightly applied the multiplier of 15. He further contended that future prospects has rightly been awarded as the deceased was 44 years of age at the time of accident. He defended the amount awarded under conventional heads.

The claimants were not able to establish the monthly earning of the deceased. It has come on record that he was going to truck union, when he met with an accident. Further it has come on record that he was having a heavy vehicle driving licence. The said contentions were supported by deposition of PW3 Rajpal, who was owner of the vehicle on which the deceased was employed as driver.

All these materials establish that he was a driver of heavy vehicle but it was not established that actually he was earning Rs.15,000/- per month. In such circumstance, the safest yardstick is to rely upon minimum wages prevalent at the said time. During February 2016, the minimum wages for a skilled labour was Rs.9699/-. The said figure is rounded of Rs.10,000/-.

So far as the multiplier is concerned, in the present case, once the date of birth of deceased has come on record, there was no occasion to rely upon the age mentioned in the post-mortem report. Generally in the post-mortem report, the age mentioned on the admit card is taken. As per the date of birth the deceased was 44 years, at the time of accident.

As per decision of Hon'ble the Apex Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** multiplier of 14 should have been applied. There is no dispute with regard to 1/3rd deduction made for the personal expenses.

The contention of learned counsel for the appellant with regard to future prospects deserves acceptance as the challenge is that deceased was above 40 years of age and as per latest decision of Hon'ble the Apex Court in National ***National Insurance Company Limited Versus Pranay Sethi and others*** ***Special Leave Petition (Civil) No. 25590 of 2014 decided***

on 31.10.2017, 25 % addition should have been made.

Learned counsel for the respondents could not raise any serious dispute with regard to this.

The loss of dependency is recalculated as below:

Annual income 1,20,000/-

Future Prospects 25% = (1,20,000/- x 25%=30,000/-)

(1,20,000/- + 30,000/- =Rs.1,50,000/-)

1/3rd deduction for self expenses= Rs.50,000/-

Applying multiplier of 14 ---- 1,00,000/- x 14 =14,00,000/-.

The contention of learned counsel for the appellant with regard to the amount awarded under conventional heads deserves acceptance in view of ***Pranay Sethi and others's case (supra)*** where the Supreme Court has awarded Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate.

The said amounts is awarded under conventional heads.

The award dated 19.9.2016 is modified to the extent that an amount of Rs.29,25,000/- awarded is reduced to Rs.14,30,000/-. The claimants would be entitled to the balance amount, if any, payable along with interest as awarded by the Tribunal, which will be from the date of filing of the claim petition till realization of the amount.

(AVNEESH JHINGAN)
JUDGE

21.11.2017
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No