In the High Court of Punjab & Haryana at Chandigarh.

FAO-5111 of 2017
Date of decision: 04.12.2017

Surinder Kaur and another ..... Appellants.

vs.

Baldev Singh and others ..... Respondents.

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Umesh Kumar Kanwar, Advocate,
for the petitioners.

Mr. Paul S. Saini, Advocate,
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN,J.(ORAL)

The present appeal has been filed against the award dated 01.03.2016 passed by Motor Accidents Claims Tribunal, Hoshiarpur (for short 'the Tribunal').

On 13.03.2015, Iqbal Singh, aged 70 years, lost his life in a motor vehicular accident. He was on his bicycle and was hit by rashly and negligently driven truck Tipper bearing registration No.PB-07-BQ-9635. As a result of the accident, Iqbal Singh lost his life on the spot. FIR No. 50 dated 13.03.2015 was registered at Police Station Dasuya, District Hoshiarpur.

In the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the Tribunal awarded a sum of Rs.4,43,000/- alongwith interest at the rate of 7.5% per annum.

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

Counsel for the appellants contends that the Tribunal has erred in taking the earnings of the deceased as Rs.8,000/- per month. His grievance is that ITR for the years 2011-12 to 2014-15 were exhibited as Ex.A6 to A8 before the Tribunal. The same have also been produced before this Court.

As per Income Tax Return(s), Income are as under:-

Years	*Income*
2011-12	Rs. 2,15,302
2012-13	Rs. 2,12,618/-
2013-14	Rs. 2,07,124/-
2014-15	Rs.2,18,500/-.

The learned counsel for the insurance company on the other hand argued that amount of Rs. 1,25,000/- awarded under the conventional heads is on the higher side. He further argued that deduction of 1/3rd from the income has been made whereas it should have been ½ as the claimant was widow only and 40 years' son was not dependent. He has tried to defend the award so far as the non-reliance on ITR's is concerned but was not in a position to challenge the authenticity of the returns produced.

The contention raised by learned counsel for the appellants deserves acceptance.

Returns for the assessment years 2011-12 to 2014-15 were filed prior to the death of Iqbal Singh and were exhibited before the Tribunal. There were no allegation that these were forged return. In such circumstances, the Tribunal ought to have relied upon same. It is worth noticing that almost in all the four returns, there is IP address is mentioned, this ensures that these have been filed online. In such circumstances, without assigning any reason, the Tribunal wrongly assessed the loss of dependency. The same is re-calculated later in this judgment, relying upon the income as per ITR for the year 2014-2015. The multiplier applied has not been disputed. There is no dispute with regard to the age of the deceased.

The contention raised by learned counsel for the Insurance Company deserves acceptance in view of the decision of Hon'ble Apex Court in ***Sarla Verma s. Delhi Transport Corporation, 2009 (6) SCC 121***. As per the decision, where the dependency is of two to three members, only then 1/3rd deduction should have been made. In the present case, it has not been established that 40 years' old son was dependent on the deceased. Thus, ½ deduction for self expenses should be made. The amount of Rs.1,25,000/- awarded under the conventional heads will have to be restricted to Rs. 70,000/- (Rs.15,000/- towards loss of estate, Rs. 40,000/- loss of consortium and Rs. 15,000/- funeral expenses) as per the latest decision of Hon'ble Apex Court in **National Insurance Company Limited** Vs.**Pranay Sethi and Ors**.,**Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017**.

The compensation is re-calculated as under:-

Annual Income	:	Rs. 2,18,500/-
½ deduction of self expenses	:	Rs. 109250/-
Applying multiplier of 5	:	Rs.109250X5=Rs.5,46,250/-
Conventional heads:	:	Rs. 70,000/-
Total :-	:	Rs.6,16,250/-

The award dated 01.03.2016 is modified to the extent that amount of Rs.4,43,000/- awarded by the Tribunal is enhanced to Rs.6,16,250/-. The claimants shall be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

04.12.2017. **(AVNEESH JHINGAN)**
smriti **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No