IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 809 of 2017(O&M)
Date of decision December 13, 2017

Hukami Devi and another

.... Appellants

Versus

Saddam Hussain and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vipul Sharma, Advocate
for the appellants.

Mr. Suvir Dewan, 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 25.7.2016 passed by the Motor Accident Claims Tribunal, Ambala (for short 'The Tribunal') in MACT Case No. 13 (47) of 2016.

This appeal raises an issue of enhancement of compensation on the ground that no future prospects have been added to the income assessed by the Tribunal.

It was an unfortunate New year day of 2016 for the family when Munish Kumar died in a motor vehicular accident. Munish Kumar along with four other persons was travelling in a car bearing registration No. HR-08-R-9738. Satish Kumar and Munish Kumar died in the accident whereas Jasbir Singh and Devi Chand suffered injuries. The said car was hit by a rashly and negligently driver truck bearing registration No.MP-33H-1703 (for short the 'offending vehicle'). As a result of the accident both Satish Kumar and Munish Kumar died on the spot. FIR No. 1

dated 1.1.2016 was registered at Police Sation I.A. Saha District Panchkula.

The claim petition under Section 166 of The Motor Vehicles Act, 1988 (for short 'The Act') was filed by the legal heirs of deceased Munish Kumar and the Tribunal awarded Rs.7,73,000/- along with interest @ 7.5% per annum.

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

The facts have not been disputed by the parties. There is no dispute with regard to involvement and the rash and negligent driving of the offending vehicle. There is no dispute with regard to age of the deceased.

Learned counsel for the appellants has argued that the Tribunal erred in assessing the monthly income of the deceased as Rs.6,000/-. His contention is that even at the relevant time the minimum wages for an un-skilled labourer was more than Rs.6,000/-. He further contended that no future prospects have been added by the Tribunal while calculating loss of dependency. He further contended that no amount has been awarded for loss of estate.

Learned counsel for the Insurance Company, on the other hand, argued that the claimants failed to establish the earning of the deceased. He contended that since there was no established income, no future prospects should be awarded. He argued that Rs.1,00,000/- has been awarded for loss of love and affection which should not have been awarded and Rs. 25,000/- for funeral expenses which are on higher side.

The accident occurred in January, 2016 and deceased was aged 20 years. There is no dispute with regard to the facts that the claimants were not able to establish the earning of the deceased. Even the counsel for the appellant has not disputed this fact. In such circumstances, the safest yard stick is to rely on minimum wages prevalent at the time of the accident. In January, 2016 the minimum wages for un-skilled labourer was Rs.7,621/- per month. It would be safe to assess the monthly earning of the deceased as per minimum wages prevalent. For the calculation purpose, the amount of Rs. 7621/- is rounded off to Rs. 7600/-.

The contention raised by the learned counsel for the appellants that future prospects should have been awarded deserves partial acceptance. The issue with regard to future prospects and conventional heads has now been dealt with by the latest decision of the Hon'ble Supreme Court of India in **National Insurance Company Ltd. Vs. Pranay Sethi and others 2017 ACJ 2700**. In the above decision, the Hon'ble Apex Court has held that where the deceased was below 40 years and where the deceased had fixed salary or was self employed, 40% future prospects should be awarded. It is further held that no amount is to be awarded for loss of love and affection and Rs.70,000/- is to be awarded under conventional heads which is as follows:-

S.No.	***Heads of claim***	***Amount (Rs.)***
1	Loss to estate	Rs. 15,000/-
2	Funeral expenses	Rs. 15,000/-
3	Loss of consortium	Rs. 40,000/-
	Total	Rs. 70,000/-

Keeping in view the above discussion and the decision of the Hon'ble Apex Court, the compensation is re-calculated as under:-

S.No.	***Heads of claim***	***Amount (Rs.)***
1	Annual earning	76,00/- x 12=91,200
2	Add 40% future prospects	36,480/- = (1,27,680/-)
3	1/2 deduction for self expenses	63,840/-
4	Multiplier applied	18 x 63, 840
	Total	11,49,120/-
5	Funeral expenses Loss of Estate	15,000/- 15,000/-
	Total	11,79,120/-

Since in the present case the compensation is being re-calculated, it was appropriate that in order to arrive at just and equitable compensation the amounts awarded under various conventional heads and for loss of love and affection are made in consonance with the decision of the Hon'ble Apex Court.

The award dated 25.7.2016 is modified to the extent that the amount awarded by the Tribunal of Rs. 7,73,000/- is enhanced to Rs. 11,79,120/-.

No other issue has been raised.

The claimants would be entitled to the enhanced amount of compensation along with interest @ 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.

(AVNEESH JHINGAN)
JUDGE

December 13, 2017
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No