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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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FAO No.2579 of 2001
Date of Decision: 13.12.2018

Suresh Wati and others

Appellants

Versus

Kulwinder Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Deepak Saini, Advocate for
Mr. Pritam Saini, Advocate
for the appellants.

Mr. R.M. Suri, Advocate
for the respondents.

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AVNEESH JHINGAN, J (Oral):

The award dated 28.03.2001 passed by the Motor Accident Claims Tribunal, Ambala [for brevity 'the Tribunal'] has been assailed by the legal heirs of Jai Pal for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The appellants are the widow, one minor son, one major son and mother of the deceased. The driver of Truck bearing registration No. PB-11J-2101 [hereinafter referred to as 'offending vehicle'], owner and insurer i.e. National Insurance Company Ltd., of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 30.04.1999, Jai Pal alongwith his brother Parshotam Lal was going to his in village Tepla, Tehsil and District Ambala. They were on separate bicycles. The bicycle of Jai Pal was hit by a rashly and negligently driven offending vehicle. As a result of the impact, he suffered grievous injuries and died at the spot.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded ₹2,02,000/- alongwith interest @ 9% per annum. The said amount included ₹10,000/- for funeral expenses.

In the claim petition, the claimants pleaded that the deceased was working as a labourer in a cycle factory and was also selling milk. It was claimed that he was getting a salary of ₹3,500/- per month and he was earning ₹3,500/- by selling milk. But the claimants failed to substantiate the occupation and monthly earning of the deceased. The Tribunal treating him to be an unskilled labourer, assessed his monthly income as ₹1,500/-, made 1/3rd deduction for self-expenses and multiplier of '16' was applied, as the deceased was 38 years old at the time of accident.

Heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellants contends that the Tribunal erred in assessing monthly income of the deceased as ₹1,500/- which is even less than the minimum wages prevalent in the State at the time of accident. He argues that no future prospects have been awarded and the Tribunal wrongly made 1/3rd deduction for self-expenses instead of 1/4th as the deceased was survived by four dependents. His grievance is that no amounts have been awarded under the conventional heads and the amount awarded for funeral expenses is on the lower side.

Learned counsel for the insurer while defending the award submits that the claimants failed to prove the monthly earning of the deceased, the Tribunal rightly assessed the monthly income of the deceased as ₹1,500/-. He further contends that the deceased was 38 years old and thus, multiplier of '16' has been wrongly applied.

The contentions raised by learned counsel for the appellants deserve acceptance. Albeit the claimants failed to substantiate the occupation and monthly earning of the deceased, in such circumstances, the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. The minimum wages were ₹1,900/- in the State of Haryana at the time of accident, thus monthly income of the deceased is assessed as ₹1,900/-.

Having due regard to the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480***, 40% future prospects are awarded. The appellants are also entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to the widow for loss of consortium.

There is no dispute between the parties that the deceased was survived by four dependents. In consonance with decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** 1/4th deduction for self-expenses is made.

As the quantum of compensation is being revisited, the multiplier of '15' is applied as per decision of the Supreme Court in ***Sarla Verma's*** case (supra).

In view of above discussion, the compensation is re-calculated as under:-

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	1,900/-
40% Future Prospects	760/-
Sub Total	2,660/-
1/4th deduction for self expenses	665/-
Monthly Dependancy	1,995/-
Annual Dependancy	23,940/-
Applying multiplier of '15'	**3,59,100/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Grand Total	**4,29,100/-**

The award dated 28.03.2001 is modified to the extent that amount of ₹2,02,000/- awarded by the Tribunal is enhanced to ₹4,29,100/-. The amount awarded for loss of consortium to the widow shall be disbursed to her and the balance amount shall be disbursed to the claimants in the same proportion as was held by the Tribunal.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

December 13th, 2018
pankaj baweja

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No