IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4102 of 2005
DECIDED ON: DECEMBER 04, 2018

AMARJIT KAUR & OTHERS

.....APPELLANTS

VERSUS

SHIVJI RAM & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Ms. Kiran Bala Jain, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate
for the respondent-Insurance Company.

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AVNEESH JHINGAN, J (ORAL)

The award dated 25.11.2014 passed by Motor Accident Claims Tribunal, Kaithal (for short 'the Tribunal') has been assailed by the legal heirs of Yadhvinder Singh (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short '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 driver of Tata Truck bearing registration No. RJ-14IG-1142 (hereinafter referred to as 'offending vehicle'), owner and insurer i.e. The New India Assurance Company Ltd. have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts necessary for the adjudication of the present appeal are that on 13.07.2000, Yadhvinder Singh (deceased) was going on a truck bearing registration No. DL-1G-A-3612 from Ratlag to Delhi. On his way, the truck was hit by a rashly and negligently driven offending vehicle. As a result of the impact the cabin of the truck was smashed and the deceased was trapped inside the cabin. He was taken out later, but due to injuries sustained in the accident he died at the spot. FIR was lodged.

A claim petition under Section 166 of the Act was filed by widow, three minor children and parents of the deceased.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. Respondents were held jointly and severally liable to pay the compensation. The Tribunal awarded a compensation to the tune of ₹4,09,000/- alongwith interest @9% per annum. The amount awarded included ₹15,000/-for loss of consortium and further an amount of ₹5000/- each for funeral expenses and transportation of body.

The claimants pleaded before the Tribunal that the deceased was working as driver and was earning ₹8,000/- per month. *Albeit* claimants failed to substantiate the monthly earnings of the deceased, therefore, the Tribunal assessed the monthly income of the deceased as ₹3000/- per month. Multiplier of 16 was applied and 1/3rd deduction for self expenses was made.

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

Learned counsel for the appellants contended that the income assessed by the Tribunal is on the lower side. He was a driver of truck and was earning ₹10,000/- per month. He further contended that the Tribunal erred in making 1/3rd deduction for self expenses as the deceased was survived by six dependants. The grievance is that no future prospects have been awarded and the amount awarded under the conventional heads are on the lower side. Further no amount has been awarded for loss of estate.

Learned counsel for the insurer defended the award and argued that the appellants failed to adduce any evidence regarding the earnings of the deceased.

There is no dispute between the parties on multiplier of 16 applied by the Tribunal.

The challenge to the monthly earnings of the deceased lacks merit. No evidence was produced to substantiate the monthly earning of the deceased. The fact remain that he was a truck driver, hence, at the most he can be treated as a semi-skilled labourer. In the absence of any proof the safest yardstick is to rely upon the minimum wages prevalent in the State of Haryana at the time of accident, the Tribunal has done so. Rather, the income of the deceased assessed by the Tribunal is on a little higher side as that of semi-skilled labourer.

Keeping in view the facts and circumstances of the case and number of dependants survived by the deceased, no reduction is called for in the monthly income of the deceased. Hence, it is maintained as it is.

In view of the decisions of Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others;*** ***2017 (4) RCR (Civil) 1009 and*** ***Hem Raj vs. Oriental Insurance Company*** Ltd ;**2018 (2) PLR 480,** 40% future prospects are awarded**.** Claimants are also entitled to a sum of ₹15,000/- each for funeral expenses and for loss of estate. Further, an amount of ₹40,000/- is awarded for loss of consortium to the widow.

In consonance with the decision of Supreme Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another;*** ***(2009) 6 SCC 121,*** where the deceased is survived by 4 to 6 dependants, 1/4th deduction for self expenses is to be made. In the present case the deceased was survived by 6 dependants, hence, 1/4th deduction for self expenses is made.

In view of afore-said discussion, the compensation is recalculated as under:

	Head	**Compensation awarded**
(i)	Income	₹3000/- per month
(ii)	Future prospects at 40%	₹1200/- per month
(iii)	Total Income	₹4200/- per month
(iv)	Deduction of personal expenses	₹1050/- (i.e. 1/4th of total income)
(v)	Multiplier	16 (as per age of deceased)
(vi)	Total Dependency	₹3150x12x16=₹6,04,800/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of Consortium	₹40,000/-
	Total Compensation awarded	₹6,74,800/-

The award dated 25.11.2014 is modified to the extent that amount awarded of ₹4,09,000/- is enhanced to ₹6,74,800/- and the claimants/appellants shall be entitled to interest @7.5 % per annum on the enhanced amount of compensation from the date of filing of claim petition till actual realization of the amount.

The appeal is partly allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

DECEMBER 04, 2018
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No