IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.3710 of 2007 (O&M)
Date of decision: 02.05.2018

Sita Devi .... Appellant

Versus

Shish Pal and others ..... Respondents

2. FAO No.3711 of 2007 (O&M)

Sanjay Arora and another .... Appellants

Versus

Shish Pal and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Kanik a Saini, Amicus Curiae
for the appellant (s).

Mr. Paul S.Saini, Advocate
for the Insurance Company.

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Avneesh Jhingan, J.

The present two appeals have been filed against the award dated 08.06.2007 passed by Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal').

The record of this case was burnt and has been reconstructed from the salvaged record and copies supplied by counsels, subject to all just exceptions.

The present two appeals have been filed, one by the widow and the other by two sons of deceased-Vishan Dass @ Bishan Dass, for enhancement of compensation awarded by the Tribunal.

On 19.07.2005 at about 2.45 p.m., Vishan Dass @ Bishan Dass was coming to his house on a rickshaw. Near Gate No.1, Subzi Mandi, Karnal, a Maruti Car bearing registration No.HR-07-C-0390 (for short, 'the offending vehicle") struck the rickshaw. As a result of the impact, Vishan Dass @ Bishan Dass fell down on the road and suffered grievous injuries. He was taken to Tagore Hospital, Sector-14, Urban Estate, Karnal and then was referred to PGIMER, Chandigarh where he remained admitted upto 27.07.2005 the day he succumbed to the injuries.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of the deceased. The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The age of the deceased was taken as 66 years. His monthly salary was assessed by the Tribunal as Rs.5,000/-. 1/3rd deduction was made for self expenses and after applying a multiplier of 5, a sum of Rs.2,10,040/- along with interest @ 7.5% p.a. was awarded. The amount awarded included Rs.10,000/-for loss of consortium, funeral expenses and transportation.

Against the said award, two appeals have been filed, but no one appeared for the appellants in both the appeals. Ms. Kanika Saini (Enrolment No.P/1908/2016), who is present in Court, was appointed as amicus curiae. Copy of the paper-book was handed over to her. She has assisted the court after going through the paper book and record.

Learned amicus curiae argued that the income tax returns of the deceased for assessment years 2003-04, 2004-05 and 2005-06 were produced before the Tribunal. The said returns were neither doubted nor rebutted yet the Tribunal erred in assessing the income of the deceased as Rs.5,000/- per month. She contended that the amount of Rs.10,000/- awarded under the conventional heads is on the lower side.

Learned counsel for the insurer though defended the award but was not in a position to dispute the income shown in the income tax returns.

It would be pertinent to mention here that the accident occurred in the financial year 2005-06 and the income tax returns for financial year 2002-03 to 2004-05 were produced before the Tribunal. From the perusal of the returns, it is evident that the income being shown in the returns was almost consistent. During the financial year 2004-05 income from business and profession was shown as Rs.1,51,000/- and after availing the rebate, no income tax was payable. It was pleaded in the claim petition itself that the deceased was having a shop of *Halwai.* In such circumstances, there was no occasion with the Tribunal to rely upon a guess work to assess the income of the deceased. There is no issue with regard to the deduction for self expenses and multiplier applied. The appellants are entitled to Rs.70,000/- under the conventional heads as per the decision of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157.***

The compensation is recalculated as under :-

Annual income	Rs.1,51,000/-
1/3rd deduction for self expenses	Rs.50,333/-
Dependency	Rs.1,00,667/-
Applying multiplier of 5	Rs.5,03,335/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Total	Rs.5,73,335/-

The award dated 08.06.2007 is modified to the extent that the amount awarded by the Tribunal of Rs.2,10,040/- is enhanced to Rs.5,73,335/-. The Tribunal shared the compensation equally between the widow and two sons. Taking into consideration the age of the widow at present, it is deemed appropriate to order that the widow is entitled to 50%of the enhanced amount and rest of the 50% amount would be equally divided among two sons.

The claimants would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeals are partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

02.05.2018
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1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes