IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.4147 of 2008 (O&M)
Date of decision: 01.05.2018

New India Assurance Company Ltd. .... Appellant

Versus

Surinder Kaur and others ..... Respondents

2. FAO No.1857 of 2009 (O&M)

Surinder Kaur and others .... Appellants

Versus

Deepak Kumar and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ashwani Talwar, Advocate and
Mr. Lalit Kumar, Advocate
for the appellant in FAO No.4147 of 2008 and
for respondent No.3 in FAO No.1857 of 2009.

Ms. Simranjeet Kaur, Advocate
for respondents No.1 to 4 in FAO No.4147 of 2008 and
for the appellants in FAO No.1857 of 2009.

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Avneesh Jhingan, J.

The claimants and the insurer of the offending vehicle, both are in appeal against the award dated 25.07.2008 passed by Motor Accidents Claims Tribunal, Ropar (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.

In the appeal filed by the Insurer, the issue raised is that the Tribunal while considering the income has not deducted the income tax.

The claimants are aggrieved that the age of the deceased at the time of accident was 49 years, 7 months, which has wrongly been taken by the Tribunal as 52 and as a result, multiplier has wrongly been applied. No future prospects have been added and the amounts awarded under the conventional heads are on the lower side.

The bare facts necessary for adjudication of the present appeal are that Tarsem Lal, Head Constable in Punjab Police was hit by a rashly and negligently driven Trailor bearing registration No.HR-58-6101 (for short, 'the offending vehicle"). Tarsem Lal was on foot. He was run over by the trailor. He died at the spot. His body was taken to Civil Hospital, Khanna.

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 salary of the deceased was proved as Rs.15,655/- per month. The income tax return for assessment year 2003-04 was exhibited before the Tribunal. As per the income tax return, the date of birth of deceased was 29.11.1956. The Tribunal awarded a sum of Rs.14,37,000/- along with interest @ 9% per annum. It included Rs.50,000/- awarded for anguish and sorrow and Rs.9500/- on account of funeral expenses, loss of consortium and loss of estate.

Learned counsel for the insurer argued that the salary received by the deceased was taxable as he was also filing the income tax return but the Tribunal has no deducted income tax while taking into consideration the salary. The contention deserves acceptance. Supreme Court in ***Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., (2010) 12 SCC 378*** held that income tax is to be deducted from the salary.

The annual income of the deceased was Rs.1,87,860/-. Nil slab during the relevant year was upto Rs.1,00,000/-. Since there were deductions also available, the detail of which is not on record and estimated figure of Rs.8,000/- deducted as income tax.

No one appeared for the claimants. Ms. Simranjeet Kaur (Enrolment No.3716 of 2014), who is present in Court, is appointed as amicus curiae. She has assisted the court after going through the paper book and record. The amicus curaie be paid by the High Court Legal Services Authority.

Learned amicus curiae appearing for the claimants argued that the date of birth of the deceased was specifically mentioned in the income tax return which was exhibited before the Tribunal. As per return, the deceased was aged 49 years and 7 months. The Tribunal erred in considering the age at 52 years. She contended that no future prospects have been added. Contention is that the amounts awarded under the conventional heads are on the lower side and multiplier has wrongly been applied.

From the perusal of income tax return from the partially burnt record, it is evident that the date of birth mentioned therein, the deceased was 49 years and 7 months at the time of the accident. It would be pertinent to note that the return is for the assessment year 2003-2004 i.e. much before the date of accident. It leaves no doubt that the date of birth mentioned in the income tax return filed with the department can be doubted. Even otherwise, the Tribunal relied upon the post-mortem report which would only give estimation of age. In such circumstances, the age of the deceased is taken as below 50. In consonance with the decision of the Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77,*** multiplier of 13 is to be applied.

The deceased was a Head Constable in Punjab Police and was below 50 years. As per the decision of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157,*** 30% future prospects are to be added and no amount can be awarded for anguish and sorrow but the claimants are entitled to Rs.70,000/- under the conventional heads.

The compensation is recalculated as under :-

Annual income	Rs.1,88,000/-
Less income tax	Rs.8,000/-
Total	Rs.1,80,000/-
30% future prospects	Rs.54,000/-
Total income	Rs.2,34,000/-
1/3rddeduction for self expenses	Rs.78,000/-
Dependency	Rs.1,56,000/-
Applying multiplier of 13	Rs.20,28,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Total	Rs.20,98,000/-

The award dated 25.07.2008 is modified to the extent that the amount awarded by the Tribunal of Rs.14,37,000/- is enhanced to Rs.20,98,000/-.

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

01.05.2018
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1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes