IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2575 of 2010 (O&M)

Date of Decision: 19.02.2018

Satya Sharma

.......Appellant

Versus

Rajbir Singh and another

......Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashish Gupta, Advocate
for the appellant.

Mr. Yogesh Goel and Mr. Deepak Goel, Advocates
for the respondents.

AVNEESH JHINGAN, J.(oral)

The present appeal has arisen from award dated 29.07.2009 passed by the Motor Accidents Claims Tribunal, Ludhiana (for short 'the Tribunal').

An accident took place on 13.08.2005. Balbir Singh Sharma aged 72 years was going towards his factory from Sahnewal side to Ludhiana side on G.T. Road on scooter bearing registration No.PB-10-AX-4305. When he reached near Dhandari Kalan Railway Station, a rashly and negligently driven Jeep bearing registration No.HR-19-A-1016 (for short 'the offending vehicle') struck against the scooter. As a result of which Balbir Singh Sharma fell down on the road and received multiple injuries. He was taken to Apollo Hospital, G.T. Road, Sherpur, Ludhiana. He succumbed to his injuries in the hospital. FIR was registered at Police Station Focal Point, Ludhiana.

In a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the Tribunal considered that the accident occurred due to rash and negligent driving of the offending vehicle, the age of the deceased was 72 years and that he was survived by a widow.

This was burnt case and has been reconstructed from the salvaged record and copies supplied by counsel subject to all just exceptions.

I have heard learned counsel for the parties and perused the record.

The Tribunal awarded a sum of Rs.1,00,000/- which included Rs.2000/- each for funeral expenses and for loss of love and affection. The compensation awarded was along with interest at the rate of 6% per annum.

Learned counsel for the appellant argued that the monthly earning of the deceased was proved as Rs.21,500/-. He was working with Avery Cycle Industries. Assistant Personal Manager deposed before the Tribunal as AW3 who had brought the salary register of the staff. TDS certificates were also exhibited as AW3/2. PAN card of the deceased was also exhibited as Ex.A4. His grievance is that the Tribunal erred in assessing the monthly earning of the deceased as Rs.3000/-. He argued that the amount awarded under conventional heads is on the lower side.

Learned counsel for respondents No. 1 and 2 argued that the income tax return of the deceased was not produced before the Tribunal and in such circumstance, the earning of Rs.21,480/- per month cannot be accepted.

The contention raised by learned counsel for the appellant deserves acceptance. The earning of the deceased was duly proved by the deposition of Assistant Personal Manager, who appeared as AW3. The salary certificate issued by the employer was duly produced. TDS deducted at the time of paying the salary was also proved. It is not that each and every possible evidence has to be produced to prove the earning, especially when none of the evidence produced was rebutted by the respondents.

The Compensation is recalculated taking the monthly earning of the deceased as Rs.21,000/-. The same is being taken after taking into consideration that certain income-tax apart from the TDS would be payable on the salary income.

Having regard to the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transporation Corporation and another (2009)6 SCC 121***, ½ deduction would be made for self expenses and multiplier of 5 would be applied taking clue from the Second Schedule of the Act.

In view of the decision of the Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi and others*** 2017 AIR (SC) 5157, Rs.70,000/- is to be awarded under conventional heads i.e. Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses.

Annual earning	21000 x 12 =2,52,000/-
½ self deduction	Rs.1,26,000/-
multiplier of 5	Rs.6,30,000/-
conventional heads	Rs.70,000/-
Total	Rs.7,00,000/-

The award dated 29.07.2009 is modified to the extent that the amount awarded of Rs.1,00,000/- is enhanced to Rs.7,00,000/-.

The appellant would be entitled to enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the above said terms.

(AVNEESH JHINGAN)
JUDGE

19.02.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No