IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2934 of 2011

DATE OF DECISION : 19.01.2018

Santosh Rani and others

.... APPELLANTS

Versus

Innu Kumar and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Vinod K. Kanwal, Advocate, for
Mr. Ashit Malik, Advocate,
for the appellants.

Mr. Akshdeep Singh, Advocate,
for respondents No.1 and 2.

Mr. Ashwani Talwar and Mr. Lalit Kumar, Advocates,
for respondent No.3.

* * *

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 17.02.2011 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short, `the Tribunal').

In a motor vehicular accident that occurred on 28.01.2010, Ram Karan lost his life. When he was walking on kacha portion of the road on the left side, a rashly and negligently driven jeep bearing registration No. UP-11T-3512 struck against him. As a result of the injuries suffered, he died on the spot.

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 awarded a sum of ₹ 5,06,000/- along with interest at the rate of 7.5% per annum.

The present appeal has been filed for enhancement of compensation.

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

Learned counsel for the appellants contends that the monthly earning of ₹ 3,600/- taken by the Tribunal is on lower side. It is less than the minimum wages of an unskilled labourer prevalent at that time. His grievance is that no future prospects have been awarded and further that the amounts awarded under the conventional heads are on the lower side.

The contentions raised by learned counsel for the appellants deserve acceptance, inspite of resistance by learned counsel for the respondents. In cases, where the claimants have not been able to prove earning of the deceased, the most reliable method would be the minimum wages prevalent at the time of the accident. In the State of Haryana, the minimum wages on the day of the accident was ₹ 4,214/- per month. Rounding off the same, monthly earning of the deceased in this case is taken as ₹ 4,200/-.

The Hon'ble Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, Special Leave Petition (Civil) No. 25590 of 2014, decided on 31.10.2017*** has held that where the deceased was below 40 years of age, was self employed or having fixed salary, 40% future prospects are to be awarded. It has further been held in ***Pranay Sethi's case*** (supra) that a sum of ₹ 70,000/- is to be awarded under the conventional heads, i.e. ₹ 15,000/- each for loss of estate and funeral expenses; and ₹ 40,000/- for loss of consortium.

The Hon'ble Apex Court in ***Hem Raj Vs. Oriental Insurance Company Ltd., Civil Appeal No. 19603 of 2017, decided on 22.11.2017*** has held that future prospects are to be awarded even in cases where the income of the deceased is assessed while relying upon the minimum wages prevalent at the time of the accident.

There is no dispute raised with regard to age of the deceased being less than 40 years, deduction of 1/4th made for self expenses and multiplier of 15 applied by the Tribunal.

The compensation is, therefore, re-calculated as under :-

Monthly income of the deceased	₹ 4,200/-	
Future prospects	₹ 1,680/-	
Total income	₹ 5,880/-	
Less 1/4th deduction for self expenses	₹ 1,470/-	
Monthly dependency	₹ 4,410/-	
Loss of dependency by applying multiplier of 15 4410 X 12 X 15		₹ 7,93,800/-
Loss of estate		₹ 15,000/-
Funeral expenses		₹ 15,000/-
Loss of consortium		₹ 40,000/-
Total		₹ 8,63,800/-

Consequently, the award dated 17.02.2011 is modified to the extent that the compensation of ₹ 5,06,000/- awarded by the Tribunal is enhanced to ₹ 8,63,800/-.

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

In the present appeal the issue regarding liability was also raised. The appellant produced the driving licence of the driver of the offending vehicle.

Learned counsel for the Insurance Company very fairly states that the driving licence has been verified and it was a valid driving licence to drive the offending vehicle.

In view of the said statement made by learned counsel for the Insurance Company, there was no breach of conditions of the insurance policy. The liability would be of the Insurance Company to pay the compensation as well as the enhanced amount to the claimants. The right of recovery awarded by the Tribunal to the Insurance Company are set aside.

The appeal is partly allowed in the aforesaid terms.

January 19, 2018 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes