IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 6165 of 2010

DATE OF DECISION : 07.05.2018

Pratibha and others

....APPELLANTS

Versus

Shishpal Tomar and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sandeep Lather, Advocate,
for the appellants.

Mr. Aseem Aggarwal, Advocate,
Standing Counsel for Union of India,
for respondent No.3.

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AVNEESH JHINGAN, J. (Oral)

This appeal is against the award dated 15.05.2009 passed by the Motor Accident Claims Tribunal, Jind (for short, `the Tribunal') for enhancement of compensation.

2. The bare facts necessary for adjudication of the present appeal are that on 29.08.2007. Randhir Singh SOWAR in Army along with his wife was coming back from Hisar to Saatrod Kalan on a motor cycle. At about 3.30 PM, near railway over bridge by-pass Hisar, a Military truck bearing registration No. 03D-152771E (for short, `the offending vehicle') struck the motor cycle. As a result of impact, Randhir Singh suffered grievous injuries.

He was taken to Military Hospital Cantt Hisar, where he succumbed to injuries. FIR No. 697 dated 30.08.2007 was registered at Police Station Sadar Hisar.

3. The widow, two minor sons and parents of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act').

4. The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. As per the Last Pay Drawn Certificate Ex.P2, salary of the deceased was ₹ 10,625/- per month. The Tribunal, after deducting the family pension amount of ₹ 4,200/- per month, awarded the compensation. Though the deceased was 29 years of age, yet the multiplier of 18 was applied. One-third deduction was made for self expenses. The Tribunal awarded a sum of ₹ 6,57,500/- as compensation. The amount awarded included ₹ 9,500/- awarded under the conventional heads.

5. The present appeal has been filed for enhancement of compensation.

6. Learned counsel for the appellants contends that the Tribunal erred in deducting the family pension. No future prospects have been added. The grievance of the appellants is that after the death of Randhir Singh, sixth pay commission was implemented with effect from 01.01.2006, hence, the revised salary should be considered for calculating the compensation. Learned counsel argued that the amounts awarded under the conventional heads are on the lower side.

7. The contesting respondent is basically the Union of India through Defence Ministry, as the offending vehicle was an Army vehicle.

8. Learned counsel for respondent No.3 – Union of India contends that the Tribunal erred in applying the multiplier of 18 because the deceased was 29 years of age. He showed his inability, in absence of instructions, to provide the exact revised salary and entitlement of the deceased in view of implementation of the sixth pay commission.

9. The contention raised that the amount of family pension cannot be deducted deserves acceptance. The Supreme Court in case of ***Lal Dei and others Vs. Himachal Road Transport,*** 2007 (8) SCC 319, relying upon its earlier decision in ***Mrs. Helen C. Rebello Vs. Maharashtra State Road Transport Corpn.,*** AIR 1998 SC 3191, held that the amount of family pension cannot be deducted while calculating compensation to be awarded to the claimants under the Act.

10. The appellants would be entitled to compensation being calculated as per the revised salary to which the deceased was entitled to in view of implementation of the sixth pay commission. He was an Army personal having a permanent job. In such circumstances, his revised pay has to be considered for awarding compensation. Reliance in this regard is placed upon a decision of the Supreme Court in ***Ramrao Lala Borse and another Vs. New India Assurance Company Ltd. and another,*** 2018 (1) JT 423.

11. In view of decision of the Supreme Court in ***National***

Insurance Company Limited Versus Pranay Sethi and others, AIR 2017 (SC) 5157, as the deceased was below 40 years of age, 50% future prospects are to be added for calculating compensation. The appellants would be entitled to a sum of ₹ 70,000/- under the conventional heads, i.e. ₹ 15,000/- each for loss of estate and funeral expenses and ₹ 40,000/- for loss of consortium.

12. Having regard to decision of the Supreme Court in ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (6) SCC 121, keeping in view the number of dependents survived by the deceased being more than four, one-fourth deduction is to be made for self expenses. The deceased was 29 years of age, multiplier of 17 is to be applied.

13. Since today, the figure of revised salary of the deceased is not available, the respondents would re-calculate the compensation considering the revised salary of the deceased in view of implementation of sixth pay commission, minus income tax payable. 50% future prospects would be added. One-fourth deduction for self expenses would be made and the multiplier of 17 would be applied. Further, a sum of ₹ 70,000/-, i.e. ₹ 15,000/- each for loss of estate and funeral expenses and ₹ 40,000/- for loss of consortium, shall also be paid under the conventional heads.

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

15. The calculated enhanced amount shall be paid to the claimants within a period of three months from the date of receipt of certified copy of this order by the respondents. It would be desirable that the enhanced compensation is deposited by the respondents in the bank account, in which the family pension is being deposited or in the bank account, the details of which are furnished by the appellants.

16. The appeal is partly allowed in the aforesaid terms.

May 07, 2018 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	Yes