

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 1099 of 2012 (O&M)

Date of Decision:01.02.2018

Smt. Neeraj and others

.....Appellants

Versus

Vijay and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S.K. Yadav, Amicus-curiae for the appellants.

Mr. Arun Sharma, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.

Challenge in the present appeal is to the award dated 24.12.2011 passed by the Motor Accidents Claims Tribunal, Sonipat (for short 'the Tribunal') in MACT Petition No. 176 of 27.08.2011.

In a motor vehicular accident involving a Maruti Swift Car bearing registration No.DL-9CQS-7259 and a Tata 407 bearing registration No.HR-61-1518, Surrender aged 32 years and Rohtas aged 25 years lost their lives. The accident occurred on 30.11.2010. The offending vehicle i.e. Tata 407 was being driven in a rash and negligent manner. The offending vehicle was trying to overtake the Car wrongly. In order to avoid the accident, the driver of the Car applied brakes due to which the car struck against a tree. FIR No.283 dated 01.12.2010 was registered at Police Station Kharkhoda.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the legal heirs of Surrender. The Tribunal awarded a sum of Rs. 5,96,000/- along with interest at the rate of 7.5% per annum.

Since no one is appearing in this case for the appellant despite

repeated calls, Mr. S.K. Yadav, Advocate, who is present in Court is appointed as amicus curiae in the present appeal to assist the Court on behalf of appellants.

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

The claimants have claimed that the deceased was a driver with local MLA and was earning a salary of Rs.9000/- per month. It was further alleged that he had agriculture income of Rs.10,000/- per month. To support the claim, local MLA deposed before the Tribunal and filed an affidavit along with salary certificate, stating that he had employed Surrender as his driver and was paying salary of Rs.9000/- per month. Apart from the said statement and the salary certificate, no evidence was produced to show that deceased was employed as a driver. Even his driving licence was not placed on record. The registration number of the vehicle for which he was employed as a driver was also not mentioned. No evidence was led to prove his income from agriculture. In such circumstances, the Tribunal assessed the monthly earning of deceased as Rs.4600/- taking into account the minimum wages prevalent in the State at the time of accident. Keeping in view that deceased was survived by four dependents, 1/4th deduction for self expenses was made. The deceased was 32 years of age and multiplier of 16 was applied. There cannot be any dispute with regard to the deduction made for self expenses and the multiplier applied in view of the decision of Hon'ble the Apex Court in **Sarla Verma and others Vs. Delhi Transportation Corporation and another (2009)6 SCC 121.**

Hon'ble the Apex Court in **National Insurance Company Limited Versus 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 and was self employed or having a fixed salary, 40% future prospects should be awarded. It has further been held that 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. The Tribunal in the present case has only awarded Rs.5000/- for funeral and transportation expenses, Rs. 7500/- for loss of estate and Rs.7500/-for loss of consortium to claimant No.1.

As per the above discussion, the compensation is recalculated as under:

Monthly earning	Rs.4600/-
1/4 th deduction for self expenses	Rs.1150/-
	(4600-1150=3450/-)
Applying multiplier of 16 (3450x16x12)	Rs.6,62,400/-
40% future prospects	Rs.2,64,960/-
	Rs.9,27,360/-
Conventional heads	Rs. 70,000/-
Total	Rs.9,97,360/-

The award dated 24.12.2011 is modified to the extent that the amount awarded of Rs. 5,96,000/- is enhanced to Rs.9,97,360/-.

The claimants shall be entitled to enhanced amount alongwith 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.

01.02.2018

reema

(AVNEESH JHINGAN)
JUDGE