IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 2297 of 2015 (O&M)

Date of Decision: 22.05.2018

ICICI Lombard General Insurance Company Ltd.

.......Appellant

Versus

Harvinder Kaur and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Subhash Goyal, Advocate
for the appellant.

Mr. Vikram Bali, Advocate for
Mr. Vikas Gupta, Advocate
for respondents No. 1 to 5.

AVNEESH JHINGAN, J.(oral)

The insurer of the offending vehicle bearing registration No.PB-07-AF-0578 is in appeal against the award dated 1.10.2014 passed by the Motor Accident Claims Tribunal, SAS Nagar Mohali (for short 'the Tribunal').

The brief facts of the case are that on 10.3.2013 Karamjit Singh aged 28 years was driving a motor cycle bearing registration No.PB-39-B-7331. His mother Sukhwinder Kaur was the pillion rider. On reaching near Banur chowk, the offending vehicle, which was being driven rashly and negligently, on reaching the middle of road at traffic lights applied brakes, as a result motor cycle struck the truck from behind. Karamjit Singh suffered injuries and was taken to GMCH, Sector 32, Chandigarh, where he died on 11.3.2013. FIR was registered.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the widow, two minor children and parents of the deceased. The Tribunal assessed the monthly earning of the deceased as Rs. 9000/-; made 1/4th deduction for self expenses; added 50% future prospects and awarded a sum of Rs.21,90,500/- along with interest at the rate of 9% per annum. The amount awarded included Rs.1,00,000/- for loss of love and affection and Rs.25,000/- for funeral expenses.

Learned counsel for the appellant contended that the accident was caused due to rash and negligent driving of the deceased. His grievances are that the monthly earning assessed by the Tribunal is on higher side; the Tribunal erred in adding 50% as future prospects; no amount should have been awarded for loss of love and affection and the amount awarded for funeral expenses is on higher side.

Learned counsel for respondents No. 1 to 5 contended that the claimants had duly proved that the accident occurred due to rash and negligent driving of the offending vehicle. He further argued that the deceased was 28 years and was engaged in agricultural work, Rs.9000/- monthly income has rightly been assessed. His grievance is that no amount has been awarded for loss of estate and loss of consortium.

Learned counsel for the appellant has raised the issue of contributory negligence but from the perusal of paper book and the record, it is evident that not even an iota of evidence was produced in the proceedings to attribute negligence to the driver of the motor cycle. However, on the other hand Mandeep Singh, deposed as PW2 to prove rash and negligent driving of the offending vehicle. The relevant extract of his affidavit is quoted below:

> "The deponent was on his motorcycle and Sukhwinder Kaur was on motorcycle of his son. The deponent was following the deceased.

> When they reached near Banu chowk than in the meantime, a Truck No.PB-07-AF-0578 came from Landran side and driven in a rash and negligent manner at a high speed. The Truck driver suddenly applied the brakes in the middle of the road due to red traffic lights and since the deceased was crossing a green light and due to this sudden action of the Truck driver motorcycle struck against the Truck. Karamjit Singh fell down on the road and received head injury and other bodily injury."

From the deposition, it is evident that the truck was being driven rashly. The truck jumped red light and thereafter suddenly applied breaks in middle of the road. The deceased was crossing on greenlight and due to applying of sudden brakes by the truck, the motor cycle struck from behind. It is not in every case that if the vehicle struck from behind then there has to be a contributory negligence, it depend upon the facts of each case. The contention raised is rejected.

The contention of learned counsel for the appellant that the Tribunal erred in assessing the monthly earning of the deceased as Rs.9000/-, cannot be brushed aside. Though the minimum wages are just a criteria to decide the earning, in case where the occupation and the earning of the deceased is not proved. The claim that the deceased was an agriculturist was not rebutted. At the time of accident, in the State of Punjab, the minimum wages were less than Rs.5700/-. In such circumstance, it would not be appropriate to equate him as un-skilled person.

Keeping in view the facts of the case and the age of the deceased, his monthly income is assessed as Rs.7000/-. As per the decision of Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi and others*** 2017 AIR (SC) 5157, 40% future prospects are to be added. There is no dispute with regard to $1/4^{th}$ deduction made for self expenses and multiplier applied of 17. As per **Pranay Sethi's case (supra)**, the appellant would also be entitled to conventional heads to the tune of Rs.70,000/- i.e. Rs.15,000/- for funeral expenses, Rs.40,000/- for loss of consortium and Rs.15,000/- for loss of estate.

The compensation is calculated as under:

Monthly earning	Rs.7000/-
40% future prospects	Rs.2800/-
	Rs.9800/-
1/4th deducation for self expenses	Rs.2450/.-
	Rs.7350/-
Multiplier of 17 7350x17x12	Rs. 14,99,400/-
Conventional heads	Rs.70,000/-
Total	Rs.15,69,400/-

The award dated 1.10.2014 is modified to the extent that the amount of Rs.21,90,500/- awarded by the Tribunal is reduced to Rs.15,69,400/-.

The claimants would be entitled to the revised amount of compensation alongwith interest, at the rate as awarded by the Tribunal from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

22.05.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No