IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4667 of 2013
Date of decision: 21.11.2018

Smt. Seema Devi and others ....Appellants

Versus

Ram Niwas and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Mr.Abhimanyu Kalsi, Advocate for
Mr. Rakesh Dhiman, Advocate
for the appellants.

Mr. Vikrant Rana, Advocate
for respondent No.1.

Mr. Gagandeep Rana, Advocate
for respondent No.2.

Mr. Sanjeev Goyal, Advocate
for respondent No.3- Insurance Company.

Avneesh Jhingan, J. (Oral)

The present appeal has been filed against award dated 20.11.2012 passed by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal) seeking enhancement of compensation.

The widow, one minor son and one major son of Madan Singh @ Madan Kumar are the appellants. The driver of car bearing registration

No.HR-26AQ-5981 (for brevity, 'the offending vehicle'), the owner and the insurer of the offending vehicle i.e. HDFC ERGO General Insurance Company Ltd. have been arrayed as respondents No.1 to 3 respectively, in the present appeal.

The facts emanating from the record are that on 10.01.2012, Madan Singh @ Madan Kumar, aged 46 years, along with Dinesh Kumar was going from village Mehchana to Bhiwani in a car bearing registration No.DL-4CAQ-1128. When they reached on Haily Mandi, Kulana Road their car was hit by a rashly and negligently driven offending vehicle. As a result of the impact, car fell into the roadside pits. Madan Singh suffered grievous injuries. He remained hospitalised and ultimately succumbed to the injuries. FIR No.5 dated 11.01.2012 was registered at Police Station Pataudi (Gurgaon).

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act') was filed by the legal heirs of the deceased.

The Tribunal, after considering the facts and on appreciating the evidence produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹10,77,000/- along with interest @ 7.5% per annum. The amount awarded included ₹6,41,000/- for medical expenses, ₹10,000/-for loss of consortium and ₹5,000/- each for funeral expenses and loss of estate.

Heard learned counsel for the parties and perused the paperbook and record.

Learned counsel for the appellants contended that the Tribunal erred in assessing the monthly income of the deceased as ₹4,000/- as the deceased was working as a Driver. His grievance is that the amounts awarded under the conventional heads are on the lower side and no amount on account of future prospects have been awarded.

Learned counsel for the respondents defended the award and resisted any further enhancement. It is argued that the claimants failed to substantiate that the deceased was employed as a Driver.

The contentions raised by learned counsel for the appellants deserves acceptance.

It was pleaded that the deceased was working as a Driver with Shri Balaji Education Trust, Meham, District Rohtak and was drawing a salary of ₹10,300/-per month. Albeit, the claim with regard to the monthly income was not substantiated by any cogent evidence. It would be pertinent to note that the President of the Trust deposed as PW11 and stated that the deceased was employed as a Driver by the Trust. In view of the statement, it would not be appropriate to equate the deceased with a semi-skilled labourer. In cases where the claimants failed to substantiate the monthly earning of the deceased, the safest yardstick is to assess his income as per the minimum wages prevalent in the State at the time of the accident. The minimum wages for a semi-skilled labourer at the time of accident was ₹5096/-. The same is rounded off to ₹5100/- for calculation purposes.

Having due regard to the decisions of Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157*** and ***Hem Raj vs. Oriental Insurance Company Ltd., 2018(2) PLR 480***, 25% future prospects are to be awarded. The claimants shall be entitled to ₹15,000/-each for loss of estate and funeral expenses and ₹40,000/- for loss of consortium to the widow.

There is no dispute between the parties with regard to the applying multiplier of 13 and 1/3rd deduction for self expenses.

In view of the discussion above, the compensation is recalculated as under:-

Monthly income	₹5100/-
25% future prospects	₹1275/-
Total income	₹6375/-
1/3rd deduction for self expenses	₹2125/-
Monthly Dependency	₹4250/-
Applying multiplier of 13	₹6,63,000/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium	₹40,000/-
Medical expenses already awarded by the Tribunal	₹6,41,000/-
Total	₹13,74,000/-

The award dated 20.11.2012 is modified to the extent that the amount of ₹10,77,000/- awarded by the Tribunal is enhanced to ₹13,74,000/-.

The claimants shall be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

21.11.2018
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1.Whether the order is speaking/reasoned: Yes/No
2.Whether the order is reportable : Yes/No