IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3349 of 2015
Date of decision:- 16.05.2018

Amarjit Kaur and others

---Appellants.

Versus

Babu Lal @ Bablu and others

---Respondents.

CORAM: HON'BLE Mr. JUSTICE AVNEESH JHINGAN

Present:- Mr. Gaurav Aggarwal, Advocate,
for the appellants.

Ms. Kamalpreet, Advocate,
for respondent Nos. 1 & 2.

Mr. Aseem Aggarwal, Advocate,
for respondent No.3-Insurance Company.

AVNEESH JHINGAN J. (Oral)

The present appeal arises from the award dated 16.02.2015 passed by Motor Accident Claims Tribunal, Sirsa (for short 'the Tribunal').

Brief facts of the case are that, on 02.05.2014, Chhinder Singh, aged 35 years, was getting repaired his Pick Up Van near Dera Sacha Sauda Rania. In the meantime, a Bus bearing Registration No.HR-57-A-1313 (for short 'Offending Vehicle') being driven in rash and negligent manner, hit Chhinder Singh and, thereafter, struck against a Tata Sumo. As a result of the accident, Chhinder Singh sustained injuries and he was taken to General Hospital, Sirsa from where he was taken to Bombay Hospital and, thereafter, he was referred to SMS Hospital, Jaipur. He succumbed to his injuries on 04.05.2014. FIR No. 164 dated 03.05.2014 was registered.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by widow, two minor children and parents of the deceased.

The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The age of the deceased was proved as 35 years. The Tribunal awarded a sum of ₹10,10,000/- along with interest at the rate of 7.5% per annum. The said amount included ₹25,000/- each for funeral expenses and loss of consortium.

The present appeal has been filed by the appellants for enhancement of compensation.

I have heard learned counsel for the parties, perused the case file and the relevant documents produced by them.

Learned counsel for the appellants stated that Chhinder Singh (since deceased) was the owner of the Pick up van and he was a driver, hence the earning assessed by the Tribunal as ₹5,000/- is on lower side. He further contends that 1/3rd deduction for self expenses has wrongly been made as deceased was survived by more than four dependants and amount awarded under the conventional heads is also on the lower side.

On the other hand learned counsel for the respondents argued that while awarding the compensation, Tribunal added 50% future prospects which is on higher side. He further contends that claimants had failed to prove monthly income of the deceased hence the income has rightly been assessed by the Tribunal.

No other issue has been raised by learned counsel for both the parties.

The income assessed by the Tribunal is on the lower side even though the claimants failed to prove the earning of the deceased, it has not come on record that he himself was driving the said pick up van. He was the owner of the pick up van. The said pick up van remains as it is after the accident also. Since it is not proved that he himself was driving, the same or on hire basis it would be difficult to accept the claim made that he was earning ₹15,000/- per month. In any case since he was the owner of the said pick up van in such circumstance, it would not be appropriate to restrict his monthly income to ₹5,000/-. Keeping in view the minimum wages prevalent at the time of accident the monthly income of the deceased is taken as ₹6,000/-. Since the deceased was survived by more than four dependants in such circumstance as per the decision of Supreme Court in ***Smt. Sarla Verma and Others Versus Delhi Transport Corporation and Another 2009 (6) SCC 121*** 1/4th deductions for self expenses have to be made.

Having due regard to the decision of the Supreme Court in case ***National Insurance Company Ltd. Vs. Pranay Sethi and Others 2017 AIR (SC) 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd., 2017 DNJ 1102***, as the deceased was below 40 years of age and self employed or having fixed salary, 40% future prospects are to be awarded. It has further been held that the amounts of ₹15,000/- for loss of estate, ₹15,000/- for funeral expenses and ₹40,000/- for loss of consortium are to be awarded.

Since it has come on record that accident had occurred on 02.05.2014 and thereafter he remained hospitalized in three hospitals from 02.05.2014 to 04.05.2014 and later on he succumbed to injuries, in such circumstance, ₹ 20,000/- is awarded on account of medical expenses.

For the reasons mentioned above, the compensation is recalculated as under:

Sr. No.	*Heads*	*Calculations*
(i)	Salary	₹6,000/- per month
(ii)	40% added towards future prospects	₹6,000+2,400=8,400/-
(iii)	1/4th deduction towards self expenses of the deceased.	₹8,400-2,100=6,300/-
(iv)	Multiplier of 16 applied	₹6,300X12X16= 12,09,600/-
(v)	Loss of estate	₹15,000/-
(vi)	Funeral expenses	₹15,000/-
(vii)	Loss of consortium	₹ 40,000/-
(viii)	Medical Bills	₹ 20,000/-
	Total Compensation Awarded (iv)+(v)+(vi)+(vii)+(viii)	**₹12,99,600/-**

The award dated 16.02.2015 is modified to the extent that the amount awarded of ₹ 10,10,000/- is enhanced to ₹ 12,99,600/-.

The appellants/claimants would be entitled to interest on the enhanced amount at the same rate as awarded by Tribunal from the date of filing of the claim petition till realization of the amount.

Accordingly, the present appeal is partly allowed to the above extent.

16.05.2018 **(AVNEESH JHINGAN)**
Riya Grover **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*