214

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

FAO No.5879 of 2014
Date of Decision: 18.12.2018

Raj Dulari and others

Appellants

Versus

Narinder Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Monika, Advocate for
Mr. R.S. Mamli, Advocate
for the appellants.

Mr. Arun Gupta, Advocate and
Mr. M.K. Garg, Advocate
for respondents No.1 and 2.

Mr. Punit Jain, Advocate
for respondent No.3-Insurance Company.

****

AVNEESH JHINGAN, J (Oral):

The award dated 18.04.2014 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri has been assailed by the legal heirs of Parmod Kumar, seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The widow, three children and mother of the deceased are the appellants. The driver of truck bearing registration No. HR-63A-4078 [hereinafter referred to as 'offending vehicle'], owner and insurer [i.e. Cholamandalam MS General Insurance Company Ltd.] of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 23.06.2012, Parmod Kumar was going on his cycle, when he reached in front of the gate of ISGEC Factory, Yamuna Nagar, he was struck by a rashly and negligently driven offending vehicle. As a result of the impact, he sustained injuries and died at the spot. FIR No.277, dated 23.06.2012 was registered.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹21,21,189/- alongwith interest @ 7.5% per annum. The amount awarded included ₹10,000/- for loss of consortium, ₹5,000/- for loss of estate and ₹5,000/- for funeral expenses.

In the claim petition, it was pleaded that the deceased was working as a Crane Operator in ISGEC Factory. His Salary Certificate was produced as Ex.R1. As per the Certificate, salary drawn for the month of May, 2012 was ₹11,497/-. The Tribunal after considering various components of the salary, assessed monthly income of the deceased as ₹15,353/-. After determining the monthly salary, the Tribunal deducted ₹2,000/- to neutralize the effect of family pension received by the legal heirs of the deceased. 30% future prospects were awarded as the deceased was having permanent job, 1/4th deduction for self-expenses was made and multiplier of '13' was applied.

Heard learned counsel for the parties, perused the paper book and relevant documents produced by them.

Learned counsel for the appellants contends that the Tribunal erred in deducting family pension from the monthly income of the deceased. Further grievance is that the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the respondents defends the award and argues that since the legal heirs were entitled to family pension, hence, the deduction for family pension was rightly made by the Tribunal. It is further argued that the amounts under the conventional heads may be awarded strictly in consonance with the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.***

The contentions raised by learned counsel for the appellants deserve acceptance. Even in case the legal heirs of the deceased were entitled to family pension, no deduction of family pension is to be made from the monthly earning of the deceased. The family pension is rewarded to the deceased for service rendered to the employer. It is nowhere connected with the death of the deceased in the accident. The Tribunal erred in making deduction for family pension. Reliance in this regard is placed on the decision of the Supreme Court in ***Manasvi Jain vs. Delhi Transport Corporation, 2014(3) SCC 22***, wherein it has been held as under :-

> *"12. This Court in Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741: (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased."*

Consequently, the compensation shall be calculated by considering the monthly salary of the deceased as ₹15,353/-. In view of decision of the Supreme Court in ***Pranay Sethi's case*** (supra), 30% future prospects are awarded. The Claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- is awarded to the widow for loss of consortium.

There is no dispute regarding 1/4th deduction made for self-expenses and multiplier of '13' applied.

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	15,353/-
30 % Future Prospects	4,606/-
Sub Total	19,959/-
1/4th deduction for self expenses	4,990/-
Monthly Dependency	14,969/-
Annual Dependency	1,79,628/-
Applying multiplier of '13'	**23,35,164/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the Widow	**40,000/-**
Grand Total	**24,05,164/-**

The award dated 18.04.2014 is modified to the extent that amount of ₹21,21,189/- awarded by the Tribunal is enhanced to ₹24,05,164/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum 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

December 18th, 2018
pankaj baweja

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No