IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4895 of 2015(O&M)
Date of Decision: 21.03.2018

Rajesh & anr. ... Appellants

Versus

Kuldeep Singh & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Ram Bilas Gupta, Advocate,
for the appellants.

HARI PAL VERMA, J.(Oral)

The appellants have filed the present appeal against the award dated 20.01.2015 passed by learned Motor Accident Claims Tribunal, Palwal (for short “the Tribunal”) seeking enhancement of compensation, over and above awarded by the Tribunal.

Briefly stated, the claimants filed a claim-petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of their son Chetram, in a motor vehicular accident, which took place on 30.09.2013. As per the claim petition, on 30.09.2013, at about 5.00 A.M, Chetram (since deceased) along with his friend Janak was going for a morning walk from his Village Banchari towards the drain situated in the area of police station Hodal. When they had reached in front of the Rice Mill, a car bearing registration No.UK-007AS-2664 being driven by respondent No.1 in a rash and negligent manner, came from behind and hit the deceased as well as Janak. Both sustained multiple grievous injuries on their person. After causing the accident, the driver fled away from the spot. The deceased Chetram was shifted to Metro Heart Institute, Faridabad, where he remained hospitalized till 03.10.2013 and thereafter, he was taken to Vardhman

Mahavir Medical College & Safdarjung Hospital, New Delhi. Considering his grave condition, he was further shifted to RML Hospital, Delhi, on 05.10.2013, but he unfortunately died on 12.10.2013. For this accident, FIR No.326, dated 30.09.2013 was registered under Sections 279/337 IPC (later on offence under Section 304-A IPC was added), at Police Station Hodal. The deceased Chetram was about 19 years of age, student of BBA, II Year in Aggarwal College, Ballabgarh. He was an excellent sportsman of volley ball and was running a coaching centre, from where he was earning ₹5,000/- per month.

The Tribunal held that the deceased died due to injuries sustained in the accident occurred on 30.09.2013 due to rash and negligent driving of car driver (respondent No.1). On the issue of amount of compensation, PW-5 Satbir, who is father of the deceased, had deposed that the deceased was earning ₹5,000/- per month by running coaching centre. It was deposed that the deceased was a student of BBA, IIIrd Semester in Aggarwal College, Ballabgarh. While considering the case of Kishan Gopal and another Vs. Lala and others, 2013 (4) RCR (Civil) 277 and the law laid down in Lata Wadhwa & ors. Vs. State of Bihar and others, 2001(4) RCR (Civil) 673, the Tribunal assessed the income of the deceased at ₹30,000/- per annum and considering the age of mother of the deceased applied the multiplier of '15'. In this manner, the Tribunal awarded total compensation of ₹5,50,000/- by adding ₹1,00,000/- on account of money spent by the claimant on treatment of the deceased.

Not satisfied with the aforesaid amount of compensation, the appellants have filed the present appeal seeking enhancement of the same.

Learned counsel for the appellants has argued that considering the fact that the deceased Chetram was about 19 years of age and pursuing BBA, IIIrd Semester, was an excellent sportsman of volley ball and was running a coaching centre, the Tribunal has wrongly assessed the notional income of the deceased as ₹30,000/- per annum. The Tribunal should have assessed the income of the deceased on higher side and accordingly the compensation. The deceased was a student of BBA, IIIrd Semester, at the time of accident and was likely to complete his BBA professional degree within a short time. He has relied upon the decision in National Insurance Co. Ltd., Bengaluru Vs. Rajadurai S. and others, 2017 AAC 2189, wherein a B.Tech student of 18 years had died in the accident and the Tribunal had considered the income of the deceased as ₹9,000/- per month and added future prospects at 50% . The Tribunal was required to apply the multiplier of '18' considering the age of the deceased, whereas it has wrongly applied the multiplier of '15' vis-a-vis age of the mother of the deceased. The claimants are also entitled for compensation towards loss of love and affection, funeral expenses, transportation of dead body and future prospects @ 40%. He has argued that in the case of *Rajadurai S.(supra),* for a B.Tech student aged 18 years, the Tribunal has awarded total compensation of ₹17,32,500/- and the said award was challenged by the Insurance Company by way of appeal. However, the appeal was dismissed. Reliance has also been placed to a decision of the Bomaby High Court in The New India Assurance Co. Ltd. Vs. Chanda Gowardhan Gomkade, 2017 (6) AIR Bom. R 791, where the Tribunal has awarded compensation of ₹15,21,000/- on account of death of a student of 19 years in the year 2011. The said award was also challenged before the Bombay High Court, but the same was dismissed. Thus, the award was maintained.

Though respondent No.3-Insurance Company was proceeded against ex parte vide order dated 04.08.2016, but at this stage, Mr. Paul S. Saini, Advocate, has put in appearance on behalf of respondent No.3. He submits that there is no illegality in the award passed by the Tribunal as adequate compensation has already been granted. Thus, no interference is warranted.

I have heard learned counsel for the parties.

There is no dispute that the deceased Chetram was aged about 19 years and was pursuing BBA, IIIrd Semester from Aggarwal College, Ballabgarh, at the time of accident. The appellants are the parents of the deceased. Though the claimants have claimed compensation on the basis of notional income of the deceased as ₹9,000/- per month, but in order to assess the just and proper compensation to the claimants, the compensation can be awarded even beyond the claim. Recently the Apex Court in Shri Nagar Mal and ors. Vs. Oriental Insurance Company Ltd. and ors., 2018 AIR (SC) 568, has awarded compensation by assessing the notional income of a student as ₹6,000/- per month, who was pursuing professional Chartered Accountancy course and was 20 years of age. The accident in that case took place on 15.11.2008 and the Tribunal has assessed the income of the deceased as ₹6,000/- per month. Since the Tribunal has not included the benefit of future prospects and has wrongly applied the multiplier according to the age of the parents and not according to the age of the deceased, the Apex Court has awarded future prospects and assessed compensation by considering the age of the deceased

Considering the fact that the deceased was about 19 years of age and was pursuing BBA, IIIrd Semester, a professional course, which has not been rebutted by respondent No.3, this Court finds that the monthly income of the deceased is required to be ₹6,000/- per month while adhering the judgment passed by Apex Court in Shri Nagar Mal's case (Supra). Even as per the notification issued by the State of Haryana, minimum wages for unskilled workers during the relevant period was ₹5341.51. Therefore, this Court has no hesitation in assessing the notional income of the deceased at ₹6,000/- per month for the reason that not only he was a student of BBA, IIIrd Semester, he was a sportsman of volley ball and was running a coaching centre also. Therefore, the income of the deceased is assessed as ₹6,000/- per month.

On the issue of award of future prospects, the Apex Court in para 7 of *Shri Nagar Mal's case(supra)* has held as under:-

> 7. However, we find merit in the submission which has been urged on behalf of the appellants that the Tribunal failed to apply the correct multiplier and erred in not granting the benefit of future prospects in computing the income of the deceased and the loss of dependency. Having due regard to the judgment delivered by the Constitution Bench of this Court in ***National Insurance Company Limited v. Pranay Sethi, 2017 (4) RCR (Civil) 1009: (2017) 13 SCALE 12*** and in ***Sarla Verma v. Delhi Transport Corporation, 2009(3) R.C.R. (Civil) 77 : 2009(3) Recent Apex Judgments (R.A.J.) 373 : (2009) 6 SCC 121*** the correct multiplier should be 17 having regard to the age of the deceased. An addition of 40 per cent towards future prospects would also be warranted in terms of the judgment of the Constitution Bench. On this basis and since the deceased was a bachelor, the loss of

> dependency would work out to ₹8,56,800/-. The appellants would be entitled to an amount of ₹15,000/- towards loss of estate and ₹15,000/- towards funeral expenses. The award of compensation accordingly stands quantified at ₹8,86,800/-. The appellants are allowed interest @ 7.5% p.a. from the date of the filing of the petition before the M.A.C.T. till realization."

Accordingly, considering the notional income of the deceased and the future prospects awardable to the claimants, the claimants are held entitled for following amount of compensation:-

Monthly income	:	₹6,000/-
Future prospects (40%)	:	₹2,400/-
Total monthly income	:	₹8,400/-
Annual income	:	₹100,800/-
Annual dependency (after 1/2 deductions)	:	₹50,400/-
Total loss of dependency (₹50,400/- x 18)	:	₹907,200/-
Medical expenses	:	₹100,000/-
Loss of estate	:	₹15,000/-
Funeral expenses	:	₹15,000/-
Total amount of compensation	:	₹1,037,200/-
Amount already awarded	:	₹550,000/-
Enhanced amount	:	₹487,200/-

The enhanced amount shall carry interest @ 7.5% per annum from the date of filing of the claim-petition till its realization.

With the aforesaid modification in the award, the present appeal stands disposed of.

21.03.2018 **(HARI PAL VERMA)**
monika **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*