226(I)

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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1. FAO No.5485 of 2015 (O&M)
Date of Decision: 11.12.2018

Kumodani Devi and others

Appellants

Versus

Nand Kishore and others

Respondents

2. FAO No.7132 of 2015 (O&M)

The Oriental Insurance Company Ltd.

Appellant

Versus

Kumodani Devi and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Ekta Thakur, Advocate
for the appellants [in FAO No.5485 of 2015]
for respondents No.1 to 7 [in FAO No.7132 of 2015].

Mr. Rajneesh Malhotra, Advocate
for the Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 25.05.2015 passed by the Motor Accident Claims Tribunal, Chandigarh [for brevity 'the Tribunal'] has been assailed in appeal by the claimants and insurer of the Truck bearing registration No. PB-12B-1283 [hereinafter referred to as 'offending vehicle']. The grievances raised in both the appeals is regarding quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. Since both the appeals arise from same award and from the same accident, these are being disposed of by a common order.

The brief facts necessary for adjudication of the present appeals are that on 21.04.2014, Manoj Singh (deceased) was going from Village Balongi to Kharar. He was pillion rider on motor cycle bearing registration No. CH-01AD-8991, the motor cycle was being driven by Parmod Kumar. When they reached near Bansa Wali Chungi, Kharar, District Mohali, their motor cycle was struck by a rashly and negligently driven offending vehicle. As a result of the impact, Manoj Singh sustained multiple injuries and lost his life. FIR No.78, dated 21.04.2014 was registered at Police Station City Kharar, District SAS Nagar.

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 owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹18,43,016/- alongwith 7.5% interest per annum. The said amount included ₹25,000/- for funeral expenses, ₹1,00,000/- for loss of consortium to the widow and ₹1,00,000/- for loss of care and guidance of minor children.

In the claim petition, it was pleaded that the deceased was 31 years of age and was a vegetable vendor, his monthly earning was claimed to be ₹10,000/- per month. But, the claimants failed to substantiate the occupation and monthly earning of the deceased. The Tribunal assessed the monthly earning of the deceased as ₹7,023/- treating him to be an un-skilled labourer. 50% future prospects were awarded; 1/5th deduction for self-expenses was made and multiplier of '16' was applied.

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

Learned counsel for the insurer contends that the Tribunal erred in awarding 50% future prospects instead of 40%. His grievance is that 1/5th deduction for self-expenses has been wrongly made as father of the deceased was 55 years old and was not dependent. He further contends that the amount awarded under conventional heads is on the higher side and no amount should be awarded for loss of care and guidance for the minor children.

Learned counsel for the claimants defends the award and argues that 1/5th deduction for self-expenses has rightly been made as deceased was survived by young widow, four minor children and parents.

There is no dispute amongst the parties with regard to monthly income assessed, multiplier applied of '16' and the fact that deceased was 31 years old at the time of accident.

Having due regard to the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***

AIR 2017 SC 5157 and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** 40% future prospects are awarded. The appellants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to the widow for loss of consortium.

The deceased was 31 years old at the time of accident, it was pleaded that he was vegetable vendor. He was survived by widow, four minor children and old parents, thus 7 persons were dependent on his income. In the statement made by the widow of the deceased, she deposed that her father-in-law was unemployed and was dependent on deceased's earning. In such circumstances, 1/5th deduction for self-expenses made is in consonance with the decision of the Supreme Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	7,023/-
40 % Future Prospects	2,809/-
Sub Total	9,832/-
1/5th deduction for self expenses	(-) 1,966/-
Monthly Dependency	7,866/-
Annual Dependency	94,392/-
Applying multiplier of '16'	**15,10,272/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Grand Total	**15,80,272/-**

The award dated 25.05.2015 is modified to the extent that amount of ₹18,43,016/- awarded by the Tribunal is reduced to ₹15,80,272/-.

This Court while issuing notice of motion in the appeal of the insurer, granted stay to the disbursement of compensation beyond ₹15,00,000/-. The claimants shall be entitled to the balance amount alongwith 7.5% interest from the date of filing of the claim petition till realization of the amount.

Both the appeals are disposed of, in aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

December 11th, 2018
pankaj baweja

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