IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6003 of 2015 (O&M)
Date of decision: 17.12.2018

Bhago Devi and others
.. Appellants

v.
Ninder Kumar and others
.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. A. S. Dhindsa, Advocate for
Mr. Parminder Singh, Advocate for the appellants.

Ms. Vandana Malhotra, Advocate for respondent No. 3.
...

AVNEESH JHINGAN, J. (Oral)

The award dated 30.5.2014, passed by the Motor Accident Claims Tribunal, Kaithal (for brevity, 'the Tribunal') has been assailed by the legal heirs of Sham Lal seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The appellants are the widow and two sons of Sham Lal. The driver of TATA Canter bearing registration No. HR-39A-6295 (hereinafter referred to as 'the offending vehicle'), owner and the insurer, (i.e., Cholamandalam M. S. General Insurance Company Ltd.) of the offending vehicle have been arrayed as respondents No. 1 to 3 respectively in the appeal.

The facts necessary for adjudication of the present appeal are that on 21.11.2012, at about 10.40 AM, Sham Lal along with his wife

Bhago Devi and nephew Satpal was going on a motorcycle towards village Bhat Majra. On their way, their motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Sham Lal sustained grievous injuries and was taken to Saraswati Mission Hospital, Pehowa, where the doctor declared him dead. FIR No. 385 dated 21.1.2012 was registered at Police Station, Pehowa.

A claim petition under Section 166 of the Act was filed. The Tribunal, after considering the facts and appreciating the evidence adduced, held that accident occurred due to contributory negligence of the offending vehicle and the driver of the motorcycle. The contributory negligence was held in the ratio of 90:10, i.e. the offending vehicle was held 90% liable for causing the accident. The driver, owner and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal calculated compensation to the tune of ₹ 6,55,000/- and the claimants were held liable to receive an amount of ₹ 5,90,000/- along with interest @ 9% per annum.

In the claim petition, it was pleaded that the deceased was earning ₹ 65,000/- per month, as he was an agriculturist and a dairy farmer. On the other hand, a Below Poverty Line card (for short, 'BPL card') of the deceased was also produced before the Tribunal. The Tribunal, after considering the facts held that no reliable evidence was produced with regard to occupation and the monthly earning of the deceased, the Tribunal equated the deceased with an unskilled labourer and assessed the income @ ₹ 4,000/- per month; 1/3rd deduction was made for self expenses; multiplier of 15 was applied. ₹ 1,75,000/- were awarded under conventional heads, which included ₹ 1,00,000/- for loss of love and affection.

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

Learned counsel for the appellants contends that the Tribunal erred in assessing the monthly earning of the deceased as ₹ 4,000/-, as it is even less than the minimum wages for a skilled labourer. The contention is that the monthly income of the deceased should be assessed as per the minimum wages prevalent in the State at the time of accident. The grievance raised is that no future prospects have been awarded.

Learned counsel for the insurer defends the award. She argues that the BPL card produced by the appellants itself shows that the earning of the deceased was meagre and the Tribunal rightly assessed ₹ 4,000/- as his monthly earning. She further submitts that the amount under conventional heads should be strictly awarded as per decisions of the Supreme Court in **National Insurance Company Ltd. v. Pranay Sethi and others**, **AIR 2017 SC 5157** and no amount should be awarded for loss of love and affection.

There is no dispute between the parties with regard to the fact that the deceased was 40 years old at the time of accident; 1/3rd deduction made for self expenses and multiplier of 15 applied by the Tribunal.

The appellants failed to substantiate the monthly earning of the deceased, in such circumstances, the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. The deceased is treated as an unskilled labourer and minimum wages for unskilled labourer at the time of accident were ₹ 4,967/- per month in the State of Haryana. The same are rounded off to ₹ 5,000/- per month for the purpose of calculating the compensation.

Having due regard to the decisions of the Supreme Court in **Pranay Sethi's** case (supra) and **Hem Raj v. Oriental Insurance Company Ltd., (2018) 2 PLR 480** and considering the fact that the deceased was 40 years old, 25% future prospects are awarded.

As the quantum of compensation is being re-visited, it would be appropriate that the amounts awarded under conventional heads are made in consonance with the decision of the Supreme Court in **Pranay Sethi's** case (supra). The appellants 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. No amount can be awarded for loss of love and affection.

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	5,000/-
25% future prospects	1,250/-
Sub Total	6,250/-
1/3rd deduction for self expenses	2,083/-
Monthly dependency	4,167/-
Annual dependency	50, 004/-
Applying multiplier of '15'	7,50,060/-
Funeral expenses	15,000/-
Loss of estate	15,000/-
Loss of consortium to widow	40,000/-
Grand Total	8,20,060/-

Since 10% contributory negligence was attributed to the deceased, hence, the award dated 30.5.2014 is modified to the extent that instead of ₹ 5,90,000/-, the claimants are held entitled to compensation of ₹ 7,38,054/-.

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

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

17.12.2018
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No