225/2.

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

FAO No.6677 of 2015
Date of decision:14.03.2018.

Ganesh Chander @ Ganesh Singh ... Appellant

Versus

State of Punjab and others .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. R.K. Shukla, Advocate, for the appellant.

Mr. N.K. Banka, DAG, Punjab.

HARI PAL VERMA, J.*(Oral)*

Appellant-claimant has filed the present appeal seeking enhancement of compensation over and above the amount of compensation awarded by the Motor Accident Claims Tribunal, Fatehgarh Sahib (for short, "the Tribunal") vide award dated 03.12.2014.

Briefly stated, the claimant had filed a claim petition under Section 166 of Motor Vehicles Act (amended upto date) for grant of compensation on account of death of Suresh Chander. The claimant is younger brother of the deceased. As per the claim petition, Suresh Chander (since deceased) along with his father was coming from New Delhi to Amritsar in a bus bearing registration No.PB-02-BS-9837 which was being driven by Surinder Singh in a rash and negligent manner and at high speed. At about 2:15/2:30 AM when the bus, reached near Floating Restaurant, Sirhind, it fell down in the canal and due to heavy flow of water, it was carried upto 3 Kms where it was found blocked by the gates of Sounda head where the canal bifurcates into two sides. In this respect, an FIR No.110 dated 31.07.2013 was registered under Sections 279, 304-A/427 of IPC on the version of one Vijay Kumar son of Madan Lal, resident of Village Alipur Sodhian. Claimant has stated that the deceased-Suresh Chander was running trading business (pheri) by selling goods from one State to another State and earning ₹20,000/- per month from the this business.

On notice in the claim petition, respondents appeared and filed written statement by taking preliminary objections to the effect that the claim petition is not maintainable. On merits, it was submitted that there was no fault/negligence on the part of driver of the bus, as it was an act of God. The bus left Delhi for Amritsar and due to bad luck, it fell into the canal of Sirhind District.

The Tribunal had allowed the claim petition and awarded compensation of ₹6 lakhs with interest @ 9% per annum from the date of institution of claim petition i.e. 16.11.2013 till its realization. While calculating the said amount of compensation, the Tribunal took the income of the deceased as ₹5,000/- per month, applied ½ deductions and a multiplier of 18. Besides this, the Tribunal has also granted ₹30,000/- towards funeral and last ceremony and another ₹30,000/- towards loss of love and affection.

Not satisfied with the aforesaid amount of compensation, claimant has filed the present appeal seeking enhancement of compensation.

Learned counsel for the appellant-claimant has argued that the Tribunal has wrongly assessed the income of the deceased as ₹5,000/- per month, whereas in order to prove the income of the deceased that he was earning ₹20,000/- per month, the claimant had brought a bill dated 30.01.2013 (Ex.P6) vide which, the handiwork material was purchased by Suresh Chander for a sum of ₹45,000/- and another bill (Ex.C-7) vide which, the radhika handiwork material was purchased by the deceased for a sum of

₹72,000/- from Shiv Textile. Simply because the claimant had not examined any partner or proprietor of Shiv Textile to prove the income, it cannot be disbelieved that he was doing the work of textile decoration. Even the minimum wages at the relevant time for an unskilled labour was ₹5,695/-, which have further been increased to ₹6,247/- w.e.f. 01.09.2013.

On the other hand, learned counsel for the respondents-State has argued that adequate compensation has already been granted to the claimants and even the rate of interest awarded by the Tribunal is on higher side and as held by the Hon'ble Apex Court in ***National Insurance Company Limited Versus Pranay Sethi and others-2017 (4) R.C.R (Civil) 1009***, instead of 9%, rate of interest @ 7.5% per annum should be granted. He has further argued that the compensation awarded under the conventional heads runs contrary to the judgment in ***Pranay Sethi's case*** (supra).

I have heard learned counsel for the parties.

The deceased was 20 years of age at the time of his death and the Tribunal has rightly applied multiplier of 18. But considering the nature of job of the deceased, his income should have been assessed as ₹7,000/- per month. This fact has been considered by this Court in the connected appeal i.e. FAO No.7243 of 2015 titled as “Bimla Devi and others Versus State of Punjab and others.” As held in ***Pranay Sethi's case*** (supra), the claimant is entitled for future prospects @ 40% since the deceased was about 20 years of age. The Tribunal has awarded ₹30,000/- towards funeral and last rites and ₹30,000/- towards loss of love and affection, however, in view of law laid down in ***Pranay Sethi's case*** (supra), the amount granted by the Tribunal under the conventional heads is required to be reassessed. Accordingly, the claimants are entitled for ₹15,000/- towards loss of estate and another ₹15,000/- towards funeral expenses. Thus, as against the amount of ₹60,000/- so assessed by the Tribunal under the conventional heads, the claimants shall be entitled for ₹30,000/- under these heads.

On reappraisal of evidence and considering the income of the deceased as ₹7,000/- per month and the calculations made thereon, this Court finds that the claimant is entitled for compensation in the following manner:-

Heads		Calculation
Monthly Income		₹7,000
Future prospects (%age)	40	₹2,800
Total monthly income (monthly income + Future prospects)		₹9,800
Annual income (total monthly income x 12)		₹1,17,600
Deductions (towards personal expenses of deceased)	½	
Annual dependency (Annual income – deduction towards personal expenses of deceased)		₹58,800
Multiplier	18	
Total loss of dependency (annual dependency x multiplier)		₹10,58,400
Conventional heads:		
Loss of Estate		₹15,000
Funeral expenses		₹15,000
Total amount of compensation		₹10,88,400
Amount already awarded		₹6,00,000
Enhancement		₹4,88,400

Accordingly, an amount of ₹4,88,400/- is enhanced over and above the amount already granted by the Tribunal. However, as held in ***Pranay Sethi's case*** (supra), the rate of interest shall be 7.5% per annum instead of 9%, from the date of filing of claim petition till its realization.

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

(HARI PAL VERMA)
JUDGE

14.03.2018
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No