

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.8489 of 2014
Date of Decision:29.11.2018

SMT. MUKESH AND OTHERS

...Appellants

Versus

TAJDEEN @ ROHTAS AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ramender Chauhan, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J. (ORAL)

The claimants are in appeal against the award dated 31.07.2014 passed by Motor Accidents Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act') seeking enhancement of compensation.

2. The appellants are widow, three minor children and mother of deceased-Rajesh. The owner, driver and insurer of Truck bearing registration No. HR-61-4603 (for brevity, "the offending vehicle") are arrayed as respondents No.1 & 3 respectively in the appeal.

3. Facts as emanating from the record are that on 11.06.2013,

Rajesh and his brother Pawan were going from their village Dhanana to city Bhiwani for bringing goods in a Tata Magic bearing registration No.HR-99NE (T)-6274. On their way a rashly and negligently driven offending vehicle hit Tata Magic. As a result of the accident, Rajesh, who was driving the Tata Magic was crushed between the truck and seat of Tata Magic. He was taken to the General Hospital, Bhiwani where he was declared dead by the doctor. FIR No.411 dated 11.06.2013 under Sections 279 & 304-A of the Indian Penal Code, 1860 was registered at Police Station, Sadar Bhiwani.

4. The claimants filed a claim petition under Section 166 of the Act. The Tribunal, after considering the facts and appreciating the evidence produced held that the accident occurred due to 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 compensation. The age of the deceased was taken as 32 years. It was pleaded that deceased was a qualified driver and used to drive Tata Magic but his monthly income was not substantiated by adducing cogent evidence. The Tribunal considered him to be an unskilled labourer and assessed his income as ₹4,800/-. The Tribunal awarded a sum of ₹10,61,800/-as compensation along with interest @ 6% per annum.

5. Heard learned counsel for the parties and perused the paper book and record.

6. Learned counsel for the appellants argued that the Tribunal erred in considering the deceased as unskilled labourer, at least he should be considered as a semi skilled labourer, being a driver. He further contended

that the amounts awarded under the conventional heads are on lower side.

7. Learned counsel appearing for the insurer of the offending vehicle argued that the claimants failed to substantiate the monthly income of the deceased and he was merely a driver hence rightly treated as an unskilled labourer. He further argues that the Tribunal erred in awarding 50% future prospects. He resisted any further enhancement.

8. The contention raised by the learned counsel for the appellants deserves acceptance. There is no serious dispute raised with regard to the fact that the deceased was a driver, in such a situation it would not be appropriate to equate him with an unskilled labourer. In absence of any cogent evidence regarding monthly income, it would be appropriate to rely upon minimum wages, at the time of the accident, in the State of Haryana. The minimum wages for a semi-skilled labourer were ₹5472/- and compensation shall be calculated by taking the said figure as monthly income of the deceased. The appellants are entitled ₹15,000/- each for funeral expenses and loss of estate and ₹40,000/- for loss of consortium to the widow as per decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others(supra)***.

9. As the quantum of compensation is being revisited, it would be appropriate that the future prospects be awarded in consonance with the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others (supra), and in Hem raj vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** as the deceased was 32 years old and was a self employed, 40% future prospects are awarded.

10. In view of the above discussion, the compensation is re-

calculated as under:-

Monthly earning	₹5,472/-
Future prospectus @ 40%	₹2,188/-
Total	₹7,660/-
1/4 deduction for self expenses	₹1,915/-
Monthly dependency	₹5,745/-
Applying multiplier of 16 (5745x12x16)	₹11,03,040/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium to widow	₹40,000/-
Total	₹11,73,040/-

11. The award dated 31.07.2014 is modified to the extent that the amount awarded by the Tribunal of ₹10,61,800/-, is enhanced to ₹11,73,040/-.

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

13. The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

November 29, 2018

Jyoti-IV

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No