IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7971 of 2015 (O&M)

Date of Decision: 10.12.2018

Arun Kumar and others

.......Appellants

Versus

Gurnam Singh and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Kamlesh, Advocate for
Mr. Parminder Singh, Advocate
for the appellants.

Mr. M.B. Jain, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.(oral)

The award dated 16.5.2015 passed by Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal') has been assailed by legal heirs of Prem Lata seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The appellants are husband and three children (including two minors). The driver of vehicle bearing registration No.HR45A-7678(hereinafter referred to as 'offending vehicle'), owner and insurer (i.e. Bharti AXA General Insurance Company Limited) of the offending vehicle have been arrayed as respondents No. 1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 31.7.2013, Prem Lata along with her husband Swantantar Kumar was going on a bicycle. When they reached near fields of Samey Singh, situated on the road of Bibipur Jattan to Garhi Gujran road, the bicycle was struck by a rashly and neligently driven offending vehicle. As a result of the impact, Prem Lata fell down and sustained grevious injuries and died at the spot. FIR No. 285 dated 31.7.2013 was registered at Police Station Indri.

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 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 Tribunal awarded a sum of ₹4,31,600/-along with interest at the rate of 7.5% per annum. The amount awarded included ₹2,30,000/- for conventional heads including loss of love and affection.

Heard learned counsel for the parties, perused the paper book and relevant docuemnts on record.

Learned counsel for the appellants contended that the monthly earning of the deceased as ₹1800/- as assessed by Tribunal is on lower side. The grievance raised is that no deduction for self expenses should have been made.

Learned counsel for the insurer argued that the claimant failed to substantiate that the deceased was working as a tailor and was earning ₹10,000/- per month. He further argued that the amount awarded under conventional heads is on higher side and no amount has to be awarded for loss of love and affection.

The claimants in the claim petition pleaded that the deceased was working as a tailor and was earning ₹10,000/- per month, albeit, the claimants failed to produce any evidence regarding her occuaption and monthly earning. She was treated to be a housemaker, her income was assessed as ₹ 1800/-, 1/3rd deduction for self expenses was made.

Role of a housewife cannot be under- estimated. Her sincerity and duty towards the family cannot be measured in monetary terms. She is not working because of some financial benefit but it is her affection, sincerity and care towards her family that keeps her working round the clock. Her duties are not limited only as that of a wife or as of a mother.

The Hon'ble Apex Court in ***__Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others__***, 2015 (4) SCC 237, has held as under:

> "Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

The contention raised by learned counsel for the appellants that the monthly earning assessed by the Tribunal on lower side deserve acceptance.

Even if the minimum wages for a unskilled labouers is taken into consideration, in State of Haryana at the time of accident, the minimum wages were ₹5341/-. It would not be appropriate to equate the mother of three children including two minors to unskilled labourer. In such circumstance, taking into consideration minimum wages, her notional monthly income is assessed as ₹6000/-. As the income assessed is notional, no deduction for her self expenses is made. This Court relying upon a decision of Hon'ble the Apex Court in case of Arun Kumar Aggarwal and another Versus National Insurance

Company and others (2010-3) 159 PLR 428 (SC) in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others,*** Vol. CLXXII (2013-4) 329, has held as under:

> *"15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."*

The Tribunal has rightly applied the mulitplier of 14 in consonsnace with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***, as the deceased was 42 years old at the time of accident.

As the quantum of compensation is being revisited, the conventional heads are made in consoance with the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157.*** The claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to the husband for loss of consortium. No amount is awarded for loss of love and affection.

In view of above discussion, compensation is recalculated as under:

Sr. No.	Paritulars	Amount awrded
1.	Monthly income	₹6000/-
2.	Applying multipler of 14	₹10,08,000/-
3.	Conventional heads (₹15000/-each for loss of estate and funeral expenses and ₹40,000/- for loss of consortium)	₹70,000/-
4.	Total	₹10,78,000/-

The award dated 16.5.2015 is modified to the extent that amount awarded of ₹4,31,600/- by the Tribunal is enhanced to ₹10,78,000/-.

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

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

10.12.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No