IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 7951 of 2016 (O&M)

Date of Decision: 18.05.2018

Ganga Dei and others

.......Appellants

Versus

Bijender Kumar and others

......Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. B.S. Tewatia, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.(oral)

The claimants are in appeal against award dated 12.07.2016 passed by the Motor Accident Claims Tribunal, Palwal, (for short 'the Tribunal') for enhancement of compensation awarded on account of death of Heera Singh.

The brief facts of the case are that on 30.04.2015 Heera Singh due to the injuries sustained in a motor vehicular accident, lost his life. The accident was caused because of rash and negligent driving of the motor cycle bearing registration No.HR-52-C-5381. After the accident, Heera Singh was shifted to Park Hospital, Banchari from where he was referred to Sarvodaya Hospital, Faridabad. During the course of treatment, he succumbed to injuries on 25.05.2015. FIR No. 273 dated 02.05.2015 was registered at Police Station Hodal.

The legal heirs of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The

Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle and awarded a sum of Rs.12,54,750/- alongwith interest at the rate of 7.5% per annum. The amount awarded included Rs.8,24,750/- for medical expenses, Rs.1,00,000/- for loss of consortium, Rs.10,000/- for funeral expenses and Rs.5000/- for loss of estate.

I have heard learned counsel for the parties, perused the paper book and the relevant documents produced.

Learned counsel for the appellants argued that there was a certificate produced as Mark-'A' before the Tribunal, to show that the deceased was working at a Petrol Pump as Supervisor and was drawing monthly salary of Rs.7000/-, but the Tribunal assessed his earning as Rs.5000/- per month. The grievance of the appellants is that deceased was 58 years and the said age was mentioned in the claim petition which was not rebutted and same age was also mentioned in the postmortem report. The Tribunal erred in relying upon the age as mentioned in CT Scan report as 65 years. His further contention is that multiplier has wrongly been applied and no future prospects had been added.

Learned counsel for the Insurer of the offending vehicle states that the claimants were not able to prove monthly earning of the deceased. Hence, the Tribunal rightly assessed the monthly earning relying upon the minimum wages prevalent in the State at the time of accident. She relied upon CT Scan report and in the said report the age of the deceased was mentioned as 65 years. She further argued that Rs.1,15,000/- had been awarded under conventional heads, which are on higher side.

The contention raised by learned counsel for the appellants with regard to monthly earning of the deceased cannot be accepted. Merely a certificate Mark-'A' was produced before the Tribunal. No evidence or witness was produced to prove the said certificate. In such circumstance, the safest yardstick with the Tribunal was to rely upon the minimum wages prevalent in the State at the time of accident. Hence, no interference is called for on this count.

Further, the Tribunal erred in taking the age of the deceased as 65 years at the time of accident. In the pleadings his age was said to be 58 years and so is in the postmortem report. It is only in one CT Scan report that his age has been written as 65 years, which cannot be relied upon in isolation. Normally in case of serious condition of the patient, the age in such cases is written as is given by the accompanying person. It would also be appropriate that the multiplier be applied considering the age of the deceased as 58 years and multiplier of 9 would be applied in consonance with the decision of Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another,** 2009(6)SCC 121.

Having due regard to the decision of Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi and others*** 2017 AIR (SC) 5157, 10% future prospects are to be added and the appellants would also be entitled to Rs.70,000/- under conventional heads i.e. Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses.

The compensation is recalculated as under:

Monthly income	Rs.5000/-
10% future prospects	Rs.500/-
	Rs.5500/-
1/3rd deduction for self expenses	Rs.1833/-
	Rs.3667/-

multiplier of 9	Rs.3667x9x12 Rs.3,96,036/-
Conventional heads	Rs.70,000/-
Medical expenses already awarded by Tribunal	Rs.8,24,750/-
Total	Rs.12,90,786/-

The award dated 12.07.2016 is modified to the extent that the amount awarded of Rs.12,54,750/- is enhanced to Rs.12,90,786/-.

The claimants would be entitled to enhanced amount alongwith interest as awarded by the Tribunal from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

18.05.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No