IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2116 of 2017 (O&M)

Date of Decision:14.12.2018

Bir Pal and another ... Appellants

Vs.

Hari Singh and others ... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. R.S. Hooda, Advocate
for the appellants.

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

AVNEESH JHINGAN J. (Oral)

The award dated 16.07.2016 passed by the Motor Accident Claims Tribunal, Palwal (for short 'the Tribunal') has been assailed by the appellants seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short “the Act”).

The driver of Tractor bearing registration number HR-30M-2833 (hereinafter referred to as 'the offending vehicle'), owner and the insurer (i.e. M/s Future Generali India 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 17.05.2014, Shankar along with his brother Anil was going from his village Lohina to Sondhad on their motor-cycle. On their way, their motor-cycle was struck by the offending vehicle which was being driven by respondent No.1 in a rash and negligent manner. As a result of the accident, both occupants of the motor-cycle sustained injuries. They were shifted to Sarvodaya Hospital, Faridabad. During the course of treatment, Anil died. FIR No.251 dated 18.5.2014 was registered at Police Station Hodal.

In the claim petition filed under Section 166 of the Act, the Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the 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 the compensation. The Tribunal awarded a sum of ₹ 5,17,000/- along with interest @ 7.5 % per annum. The amount awarded included ₹ 47,000/- for medical expenses and ₹ 1,00,000/- for future prospectus and ₹ 1,00,000/- for non-pecuniary damages.

In the claim petition, it was pleaded that the deceased was 18 years of age and was student of Civil Engineering in Modi's Polytechnic College, Sondhad. The Tribunal considered that the deceased was not earning anything and assessed his notional income as ₹ 15,000/- per annum, multiplier of 18 was applied and no deduction was made for self expenses.

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

Learned counsel for the appellants contends that as the deceased was a student of Engineering and was having a bright future ahead, the Tribunal erred in assessing the notional income of the deceased as ₹ 15,000/- per annum which is not even at par with the minimum wages. His grievance is that the amount awarded towards future prospects is on the lower side.

Learned counsel for the insurance company while defending the award argued that the deceased was not earning anything and the Tribunal has rightly assessed notional earning as ₹ 15,000/- which is in consonance with the IInd schedule to the Act. She further argues that ½ deduction towards self-expenses has to be made. Her grievance is that amount awarded towards non-pecuniary damages is on the higher side.

Unfortunate parents have lost their young son in a motor vehicular accident cannot be compensated by any monetary compensation. Yet courts are duty bound to award just and equitable compensation in motor vehicular accident. There is no dispute between the parties that the deceased was 18 years of age at the time of accident. It was pleaded and deposed before the Tribunal that the deceased was a student of Engineering and was pursuing his studies, in such circumstances, it would not be appropriate to assess his earning as per the IInd schedule to the Act.

Keeping in view the fact that deceased was pursuing his studies in Engineering, atleast he should be equated with a skilled labourer. Minimum wages for a skilled labourer at the time of accident was ₹ 6,067/-. The monthly income is assessed as ₹ 6,100/- for the purpose of awarding compensation. Keeping in view the age of the deceased, 40% future prospects are awarded in consonance with the decision of the Apex Court in the case of ***National Insurance Company Limited*** v. ***Pranay Sethi and others***; AIR 2017 SC 5157. The claimants are also entitled to ₹ 15,000/- each for funeral expenses and for loss of estate. The deceased was unmarried, hence, as per the decision of the Hon'ble Apex Court in the case of ***Smt. Sarla Verma and others*** v. ***Delhi Transport Corporation and another***; **2009 (6) SCC 121,** one half deduction for self-expenses is made and multiplier of 18 is applied.

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

Particulars	Amount (in ₹)
Monthly income of the deceased assessed	₹ 6,100 X 12=73,200/-
40% Future prospects	₹ 29,280/-
Total	₹ 1,02,480/-
½ deduction for self expenses	₹ 51,240/-
After deduction total is	₹ 51,240/-
Applying multiplier of '18' (51240X18)	₹ 9,22,320/-
funeral expenses	₹15000/-
Loss of estate	₹15000/-
Medical expenses already awarded by the Tribunal	₹ 47,000/-
Grand Total	₹ 9,99,320/-

Accordingly, the award dated 16.07.2016 passed by the Tribunal is modified to the extent that amount of ₹ 5,17,000/- awarded by the Tribunal is enhanced to ₹ 9,99,320/-. The appellants are entitled to the enhanced amount along with interest @ 7.5 % per annum from the date of filing of the claim petition till realization of the amount.

Consequently, the appeal is partly allowed in the above said terms.

14.12.2018
rajeev

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**