IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1351 of 2018 (O&M)
Date of Decision:30.11.2018

New India Assurance Company Ltd.

...Appellant

Versus

Sheela Bai and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Paul S.Saini, Advocate for the appellant.

Mr. Vinod K.Kawal, Advocate for respondent Nos. 1 to 7.

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AVNEESH JHINGAN, J. (ORAL)

The award dated 02.11.2017 passed by Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') has been assailed by the insurer of the car bearing registration No. HR05-Z-9632 (for brevity, “the offending vehicle”).

2. The claimants have been arrayed as respondents No.1 to 7. The driver of the offending vehicle and owner of the offending vehicle has been arrayed as respondents No.8 & 9 respectively in the appeal.

3. Facts necessary for adjudication of the present appeal are that on 20.03.2017, Mahinder Singh(deceased) along with his brother Sinder Singh was cutting standing trees on katcha portion of the road which leads to Karnal. At about 2.00 PM when Mahinder Singh was busy in his work, a rashly and negligently driven offending vehicle hit him, as a result of the impact, he sustained injuries and was taken to KCGMC, Karnal where he

succumbed to injuries. FIR No.252 dated 21.03.2017 under Section 279 and 304-A of the Indian Penal Code, 1860 was registered at Police Station Sadar, Karnal.

4. A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the legal heirs of the deceased.

5. 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 Tribunal awarded a sum of ₹24,94,360/- along with interest @ 6% per annum. The amount awarded included ₹40,000/- for loss of consortium & ₹15,000/- for funeral expenses .

6. Before the Tribunal, the claimants pleaded that the deceased was working as a wood cutter and was earning ₹25,000/- per month but they failed to produced any cogent evidence to establish the occupation and monthly income of the deceased. The Tribunal relied upon the Collector rates in Karnal and assessed his income as ₹12,100/-. 1/5th deduction for self expenses was made. 40% future prospects has been awarded and a multiplier of 15 was applied.

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

8. Learned counsel for the appellant contended that the Tribunal erred in awarding the compensation by relying upon the Collector rates. He further argued that the minimum wages for an unskilled labourer in the State of Haryana was ₹8,280/- at the time of accident and the compensation

should be calculated by assessing his income as the minimum wages prevalent in the State.

9. Learned counsel for the claimants defended the award and stated that the deceased was a wood cutter and hence should be treated as skilled labourer. He further stated that no amount was awarded for loss of estate and the interest awarded @ 6% per annum is on the lower side.

10. The contention raised by the learned counsel for the appellant deserves acceptance. The claimants failed to substantiate the occupation and earning of the deceased and there was no cogent evidence on record to show that he was a wood cutter. Even otherwise, the wood cutter would not fall within the definition of a skilled labourer, in such circumstances, the compensation is to be re-calculated by assessing the income of the deceased as that of an unskilled labourer by relying upon the minimum wages prevalent in the State at the time of accident i.e. ₹8,280/-.

11. There is no dispute between the parties regarding the future prospects, deduction for self expenses and applying a multiplier of 15.

12. As the quantum of compensation is being revisited, it would be appropriate that amounts under conventional heads are given in consonance with the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, (2017) AIR (SC) 5157, and in Hem raj vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,.*** Thus, ₹15,000/- each is awarded for loss of estate and funeral expenses and ₹40,000/- is awarded to the widow for loss of consortium.

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

Monthly earning	₹8,280/-
Future prospects @ 40%	₹3,312/-
1/5 deduction for self expenses	₹2,318/-
Total	₹9,274/-
Applying multiplier of 15 (9,274x12x15)	₹16,69,320/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium to widow	₹40,000/-
Total	₹17,39,320/-

14. The award dated 02.11.2017 is modified to the extent that the amount awarded by the Tribunal of ₹24,94,360/-is reduced to ₹17,39,320/-.

15. While issuing notice of motion on 13.03.2018 the recovery of compensation amount beyond ₹17,25,000/-was stayed by this Court. The claimants shall be entitled to the balance amount along with interest.

16. The contention raised by learned counsel for the claimants that the interest awarded @ 6% per annum is on lower side, deserves acceptance. Keeping in view the rate of interest prevalent at the time of accident, it would be appropriate that claimants shall be entitled the compensation awarded along with interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

17. The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

November 30, 2018
Jyoti-IV

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