IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 19.12.2018

(1) **FAO No. 4835 of 2017**

New India Assurance Company Ltd.

.. Appellant

v.

Sursati Devi and others

.. Respondents

(2) FAO No. 8698 of 2017

Sursati Devi and others **.. Appellants**

v.

Des Raj and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Pradeep Kumar, Advocate for the appellant in FAO No. 4835 of 2017 and for respondent No. 3 in FAO No. 8698 of 2017.

Ms. Ekta Thakur, Advocate for the appellants in FAO No. 8698 of 2017.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 27.3.2017, passed by the Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') has been assailed by the insurer of vehicle bearing registration No. MH-04-FR-3300 (hereinafter referred to as 'the offending vehicle') and by the claimants being aggrieved of quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

As both the appeals arise from the same award and from same accident, these are being disposed of by a common order.

Brief facts necessary for adjudication of the present appeals are that on 27.3.2016, Atul Kumar Sharma was going on his bicycle, his friend-Ajit Sharma was a pillion rider. When they reached on the dividing road of Sectors 34/35, the bicycle was struck by a rashly and negligently driven offending vehicle. As a result of the impact, Atul Kumar Sharma suffered grievous injuries, he was taken to Government Medical College & Hospital, Sector 32, Chandigarh, where he succumbed to injuries. FIR No. 56 dated 27.3.2016 was registered.

A claim petition was filed by the parents and two sisters of the deceased. 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 the insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹ 15,21,000/- along with interest @ 7.5% per annum. The amount awarded including ₹ 2,00,000/- for loss of love and affection and ₹ 25,000/- for funeral expenses.

In the claim petition, it was pleaded that the deceased was 17 years of age and was a student of Mechanical Engineering (Three Year Diploma Course) in Bhai Mani Singh Polytechnic College, Dyalpura, Bathinda. A certificate (Ex. P7) was produced. The Tribunal assessed the monthly earning of the deceased as ₹ 8,000/-, 50% future prospects were awarded, ½ deduction was made for self-expenses and multiplier of 18 was applied.

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

There is no dispute between the parties with regard to the fact that the deceased was 17 years old, was a student of Mechanical

Engineering (Three Year Diploma Course), for ½ deduction made for self-expenses and multiplier applied of 18.

Learned counsel for the insurer contends that the deceased was merely a student and was not earning anything, the Tribunal erred in assessing his monthly earning as ₹ 8,000/-. His grievance is that 50% future prospects have wrongly been awarded. He further contends that no amount can be awarded for loss of love and affection. The amount awarded for funeral expenses is on the higher side.

Learned counsel for the claimants submits that the deceased was pursuing his Engineering, hence, the Tribunal erred in assessing his monthly earning, which is even less than the minimum wages of an unskilled labourer. Her grievance is that no amount has been awarded for loss of estate.

The deceased was 17 years old at the time of accident. It was duly proved that he was pursuing his studies in Diploma Course. It would be unfair to equate him with an unskilled labourer. He had a bright future ahead. The unfortunate parents who have lost their young child, no amount of monetary compensation awarded to the parents is enough for the loss suffered by them. Even then the Courts are duty-bound to arrive at just and equitable compensation. The only check to be kept is that it should not be a windfall for the claimants.

Keeping in view the facts of the case, it would be appropriate to rely upon the minimum wages prevalent in the State at the time of accident for determining the income of the deceased. Keeping in view the nature of studies of the deceased, it is deemed appropriate that he is equated with a skilled labourer. The minimum wages for a skilled labourer at the time of accident was ₹ 8,895/-. For calculation purposes, minimum wages are rounded off as ₹ 8,900/- per month.

The contention raised by learned counsel for the insurer that the Tribunal erred in awarding 50% future prospects deserves acceptance. Having due regard to the decisions of the Supreme Court in **National Insurance Company Ltd. v. Pranay Sethi and others**, **AIR 2017 SC 5157** and **Hem Raj v. Oriental Insuraance Company Ltd., 2018 (2) PLR 480** , 40% future prospects are to be awarded. The claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate. No amount is to be awarded for loss of love and affection.

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	8,900/-
40% future prospects	3,560/-
Sub Total	12,460/-
½ deduction for self expenses	6,230/-
Multiplier of 18 (6,230 x 12 x 18)	13,45,680/-
Funeral expenses	15,000/-
Loss of estate	15,000/-
Total compensation awarded	13,75,680/-

The award dated 27.3.2017 is modified to the extent that the amount awarded of ₹ 15,21,000/- is reduced to ₹ 13,75,680/-.

In the appeal filed by the insurer, at the time of notice of motion, payment beyond ₹ 12,00,000/- was stayed. The claimants shall be entitled to the balance amount along with interest @ 7.5% per annum from the date of filing of the claim petition till realisation of the amount.

Both the appeals are disposed of in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

19.12.2018
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No