229(I)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.5946 of 2017 (O&M)
Date of Decision: 13.12.2018

IFFCO TOKIO General Insurance Co. Ltd.

Appellant

Versus

Gulshan Devi and others

Respondents

FAO No.2255 of 2018 (O&M)

Gulshan Devi and others

Appellants

Versus

Sanjay Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ajay Singla, Advocate
for the appellant [in FAO No.5946 of 2017]
for respondent No.3 [in FAO No.2255 of 2018]

Mr. Ajit Kumar Sharma, Advocate for
Mr. R.D. Yadav, Advocate
for the appellants [in FAO No.2255 of 2018]
for respondents No.1 to 6 [in FAO No.5946 of 2017].

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<u>AVNEESH JHINGAN, J (Oral):</u>

The award dated 16.03.2017 passed by the Motor Accident Claims Tribunal, Rewari [for brevity 'the Tribunal'] has been assailed in two separate appeals, one filed by Insurer of car bearing registration No. HR-26AP-9019 [hereinafter referred to as 'offending vehicle'] and another by the legal heirs of Manoj Kumar. The grievance raised is regarding quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. Since both the appeals arise from the same award and same accident, these are being disposed of by a common order.

The brief facts necessary for adjudication of the present appeals are that on 03.12.2015, Manoj Kumar alongwith his brother Kishore Singh was searching for a *rehri* for selling clothes. At about 11:00 P.M., when they reached near village Binola at National Highway-8, Manoj Kumar was hit by a rashly and negligently driven offending vehicle while he was crossing the road. As a result of the accident, he sustained serious injuries and died at the spot. FIR No.471, dated 04.12.2015 was registered at Police Station Bilaspur.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that 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 ₹20,61,000/- alongwith interest @ 9% per annum. The said amount included ₹1,00,000/- for loss of consortium, ₹1,00,000/- for loss of love & affection and guidance to the minor children and ₹25,000/- for funeral expenses.

In the claim petition, the claimants pleaded that the deceased used to sell clothes on a *rehri* and was earning ₹15,000/- per month. But, the claimants failed to substantiate the occupation and monthly earning of the deceased by producing any cogent evidence. The Tribunal relied upon the minimum wages of a daily labourer and assessed the income of the deceased as ₹8,000/- per month. The Tribunal awarded 50% future prospects, 1/4th deduction for self-expenses was made as the deceased was survived by 4 to 6 dependents and multiplier of '17' was applied as the deceased was 28 years old at the time of accident.

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

Learned counsel for the insurer contends that the Tribunal erred in awarding 50% future prospects instead of 40%. The grievance raised is that the amounts awarded under the conventional heads are on higher side and no amount should be awarded for loss of love & affection and guidance to the minor children.

Learned counsel for the claimants defends the award and argues that the income assessed by the Tribunal is on the lower side as the deceased was selling clothes on *rehri.*

No evidence was produced with regard to occupation and monthly earning of the deceased. As per pleadings, he was selling clothes on *rehri,* in such circumstances, the Tribunal rightly relied upon the minimum wages prevalent in the State at the time of accident. No interference is called for in the findings recorded by the Tribunal equating the deceased with an un-skilled labourer. The monthly income assessed by the Tribunal as ₹8,000/- is sustained.

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 decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480***, 40% future prospects are to be awarded instead of 50%. The appellants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- are awarded to the widow for loss of consortium.

There is no dispute between the parties with regard to 1/4th deduction made for self-expenses and multiplier applied of '17'. No amount is awarded for loss of love & affection.

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	8,000/-
40 % Future Prospects	3,200/-
Sub Total	11,200/-
1/4th deduction for self expenses	2,800/-
Monthly Dependancy	8,400/-
Annual Dependancy	1,00,800/-
Applying multiplier of '17'	**17,13,600/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Grand Total	**17,83,600/-**

The award dated 16.03.2017 is modified to the extent that amount of ₹20,61,000/- awarded by the Tribunal is reduced to

₹17,83,600/-.

The claimants shall be entitled to the above mentioned amount alongwith interest as awarded by the Tribunal from the date of filing of claim petition, till realization of the amount.

Both the appeals are disposed of accordingly.

[AVNEESH JHINGAN]
JUDGE

December 13, 2018
pankaj baweja

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No