248

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.4413 of 2018
Date of Decision: 17.12.2018

Aman Bhardwaj and others

Appellants

Versus

Ram Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vivek Suri, Advocate
for the appellants.

Mr. Satpal Dhamija, Advocate
for the Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 01.03.2018 passed by the Motor Accident Claims Tribunal, Patiala [for brevity 'the Tribunal'] has been assailed by the widow, two minor children and mother of Shubh Karan Bhardwaj seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity the 'Act'].

The driver of truck bearing registration PB-10X-8723 [hereinafter referred to as 'offending vehicle'], owner and insurer [i.e. SBI General Insurance Company Ltd.] 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 11.03.2017, Shubh Karan Bhardwaj was going on a two-wheeler bearing registration No. PB-23W-1125, on his way near Dhillon Nursing Home, he was hit by a rashly and negligently driven offending vehicle. As a result of the impact, he sustained grievous injuries and died at the spot. FIR No.38, dated 12.03.2017 was registered at Police Station Sirhind.

A claim petition under Section 166 of the Act was filed by the legal heirs 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 insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹30,36,850/- alongwith interest @ 7.5% per annum. The said amount included ₹70,000/- under the conventional heads.

In the claim petition, it was pleaded that the deceased was 27 years old at the time of accident and was engaged in the business of Sweet Boxes and Property Consultancy. His Income Tax Returns for the assessment years 2014-15 to 2016-17 were exhibited before the Tribunal. The Tribunal taking the average of income of three returns, assessed annual income of the deceased as ₹2,63,720/-, 1/4th deduction for self-expenses was made and multiplier of '15' was applied, by taking the age of the deceased as 35 years, as per the post-mortem report.

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

Learned counsel for the appellants contends that the

Tribunal erred in assessing income of the deceased by taking average income of last three years. His grievance is that deceased was 35 years old, hence the multiplier of '16' should be applied. Further grievance is that no future prospects have been awarded.

Learned counsel for the insurer defends the award and argues that Income Tax payable should be deducted from the annual income of the deceased.

The contentions raised by learned counsel for the parties deserve acceptance. From perusal of the Income Tax Return and the computation for the assessment year 2016-17, it is evident that return was filed on 07.08.2016 i.e. much before the date of accident. As per computation, the income of the deceased from the business & profession, in the said year was ₹3,01,240/- and ₹1,860/- was the income tax payable.

From the Returns, it is evident that there is consistent marginal increase every year in the income of the deceased, which has to be there generally in case of a professional. In such circumstances, it would not be appropriate to take average income of last three assessment years. Rather, reliance should be placed on the Income Tax Return for assessment year 2016-17, especially when it was filed much before the date of accident.

The compensation shall be calculated on the basis of annual income of ₹3,01,240/- less income tax of ₹1,860/-.

The deceased was in the age group of 31-35, in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6***

SCC 21, multiplier of '16' is to be applied instead of '15'.

Having due regard to the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157,*** 40% future prospects are awarded.

There is no dispute between the parties with regard to 1/4th deduction made for self-expenses and ₹70,000/- awarded under the conventional heads.

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased as assessed	3,01,240/-
Less Income Tax Payable	1,860/-
Net Income	2,99,380/-
40% Future Prospects	1,19,752/-
Sub Total	4,19,132/-
1/4th deduction for self expenses	1,04,783/-
Annual Dependency	3,14,349/-
Applying multiplier of '16'	**50,29,584/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Grand Total	**50,99,584/-**

The award dated 01.03.2018 is modified to the extent that amount of ₹30,36,850/- awarded by the Tribunal is enhanced to ₹50,99,584/-. The amount awarded for loss of consortium to widow shall be disbursed to the widow and the balance amount shall be disbursed to the claimants in the same proportion as was held by the Tribunal.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

December 17th, 2018
pankaj baweja

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