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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.494 of 2018 (O&M)
Date of Decision: 06.12.2018

Kamaljit Kaur and others

Appellants

Versus

Karamvir Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Umesh Kumar Kanwar, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 22.05.2017 passed by the Motor Accident Claims Tribunal, Jalandhar [for brevity 'the Tribunal'] has been assailed by the legal heirs of Lachman Dass, seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver of car bearing registration No. PB-08BN-0547 [hereinafter referred to as 'offending vehicle']; owner of offending vehicle and insurer of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts of the case are that on 14.03.2016, Lachman Dass alongwith Paramjit Singh was going to his house at Abadpura from Adampur, District Jalandhar on motorcycle bearing registration No. PB-08AN-7747. When they reached near Jandu Singha, Police Station Maqsudan, Jalandhar, their motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, both the occupants fell down and sustained injuries. They were taken to Civil Hospital, Jalandhar, on the way to the Hospital, Lachman Dass succumbed to the injuries sustained in the accident. FIR No. 32, dated 14.03.2006 was registered.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced, held that the accident was caused 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 the compensation. The Tribunal awarded a sum of ₹2,72,000/- alongwith interest @ 7.5% per annum. The said amount included ₹20,000/- under the conventional heads.

The claimants pleaded before the Tribunal that the deceased was a Machine Man in a factory and was earning ₹25,000/- per month. But the claimants failed to adduce any cogent evidence to prove the occupation and monthly earning of the deceased. The Tribunal considering the deceased as an unskilled labourer, assessed his monthly income as ₹4,500/-; made 1/3rd deduction for self-expenses and as age of deceased was taken as

62 years, multiplier of '7' was applied.

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

Learned counsel for the appellants argues that the Tribunal erred in assessing the monthly income of the deceased as ₹4,500/- as it is even less than the minimum wages prevalent in the State of Punjab at the time of accident. His grievance is that amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer defended the award and contends that claimants failed to establish the occupation and monthly earning of the deceased, hence, the Tribunal had rightly assessed the income of the deceased as ₹4,500/- per month.

The contentions raised by learned counsel for the appellants deserve acceptance. In case where claimants failed to substantiate the monthly earning of the deceased, the safest yardstick is to rely upon minimum wages prevalent in the State at the time of accident. In the State of Punjab, minimum wages were ₹7,210/- in March, 2016 the same is rounded off to ₹7,200/- for the purpose of calculation of loss of dependency.

Having due regard to the decision of the Supreme Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157,*** appellants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to widow for loss of consortium.

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	7,200/-
1/3rd deduction for self expenses	2,400/-
Monthly Dependancy	4,800/-
Annual Dependancy	57,600/-
Applying multiplier of 7	**4,03,200/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Grand Total	**4,73,200/-**

The award dated 22.05.2017 is modified to the extent that amount of ₹2,72,000/- awarded by the Tribunal is enhanced to ₹4,73,200/-. 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 06th, 2018
pankaj baweja

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