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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.3517 of 2003
Date of Decision: 21.01.2019

Sumitra Devi

Appellant

Versus

Hardial Singh and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Kulwinder Singh, Advocate for the appellant.

None for the Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The present appeal is for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] for death of Baljit Kumar, aged 25 years. He was a student of M.A. 2nd year and his income was assessed as ₹2,500/- per month. The claimant was mother of the deceased. The negligence of the driver of vehicle that was involved in the accident was taken as established and the Motor Accident Claims Tribunal, Muktsar [for brevity 'the Tribunal'] awarded compensation as ₹2,10,000/- alongwith interest @ 9% per annum.

The owner-cum-driver and insurer (i.e. United India Insurance Company Ltd.) of Jeep bearing registration No.HYW-4740 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 and 2 respectively in the appeal.

The facts emanating from the record are that on 18.11.2001, Baljit Kumar was riding motorcycle bearing registration No. PUT-3086. When he reached near residence of Senior Superintendent of Police, Faridkot, his motorcycle was struck by a rashly and negligently driven offending vehicle. As a result of the impact, Baljit Kumar sustained grievous injuries. He was taken to Medical College, Faridkot, where he succumbed to the injuries. FIR No.157, dated 18.11.2001 was registered at Police Station Kotwali, Faridkot.

A claim petition was filed under Section 166 of the Act. After considering the facts and appreciating the evidence adduced, the Tribunal held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner-cum-driver and insurer of the offending vehicle were held liable to pay the compensation.

In the claim petition, it was proved that the deceased was a student of M.A. 2nd year. It was claimed that deceased was earning ₹8,000/- per month. But, the claimants failed to substantiate the monthly earning of the deceased. The Tribunal, considering the minimum wages prevalent in the State at the time of accident, assessed monthly earning of the deceased as ₹2,500/-; split multiplier of '15' was applied i.e. multiplier of 5 (full loss of dependency for first five years and with 2/3rd deduction and multiplier of 10 for next 10 years with 1/3rd deduction). The Tribunal also awarded ₹10,000/- for funeral expenses and for loss of estate.

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

Learned counsel for the appellant contends that no future prospects have been awarded and the Tribunal erred in applying split multiplier instead of applying multiplier considering the age of the deceased. The grievance raised is that amounts awarded under the conventional heads are on the lower side. He argues that the deceased was a student of M.A. 2nd year, the Tribunal erred in equating the deceased with an unskilled labourer. No other issue has been raised.

None appeared for representing the Insurance Company, inspite of service.

The contentions raised by learned counsel for the appellants deserve acceptance. The deceased was a student of M.A. 2nd year, it would not be appropriate to equate him with an unskilled labourer. Atleast he is to be equated with skilled labourer. The income of the deceased is assessed as ₹2,800/- per month considering the minimum wages of a skilled labourer, prevalent in the State at the time of accident.

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 and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480*** and considering the fact that deceased was 25 years old at the time of accident, 40% future prospects are awarded. The claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate.

The Tribunal erred in applying split multiplier. The multiplier is to be applied considering the age of the deceased. 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 '18' is to be applied.

There is no reason given by the Tribunal for applying split multiplier. The Supreme Court in case of ***Sri K.R. Madhusudhan and Others Vs. Administrative Officer and Another 2011 (4) SCC 689***, held as under:-

> *"In view of this evidence the Tribunal should have considered the prospect of future income while computing compensation but the Tribunal has not done that. In the appeal, which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation, granted by the Tribunal reduced the same. In doing so, the High Court not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefore.*
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> *The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the*

deceased is between 51 and 55 years the multiplier is 11, which is specified in the II Column in the II Schedule in the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6".

(emphasis supplied)

As the quantum of compensation is being re-visited, it would be appropriate that the deduction of self-expenses is made as ½ instead of 1/3 as per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased	2,800/-
40% Future Prospects	1,120/-
Sub Total	3,920/-
½ deduction for self expenses	1,960/-
Monthly Dependency	1,960/-
Annual Dependency	23,520/-
Applying multiplier of '18'	**4,23,360/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**4,53,360/-**

The award dated 02.06.2003 is modified to the extent that amount of ₹2,10,000/- awarded by the Tribunal is enhanced to ₹4,53,360/-.

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

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

January 21st, 2019
pankaj baweja

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