IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2498 of 2019

Date of Decision: 20.05.2019

Cholamandlam MS General Insurance Co. Ltd.

.......Appellant

Versus

Smt. Suman and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Punit Jain, Advocate
for appellant-Insurance Company.

Mr. S.K. Yadav, Advocate
for respondents No. 1 and 2-claimants.

AVNEESH JHINGAN, J.(oral)

The award dated 3.11.2018 passed by Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') has been assailed by the insurer of Trailor bearing registration No.RJ-32-GA-3865 (for short 'the offending vehicle').

Respondents are the widow, minor daughter of deceased and owner & driver of the offending vehicle.

The facts necessary for adjudication of the present appeal are that on 24.11.2017 Raja Ram was driving Mahindra Xylo vehicle registration No. RJ-02-GA-2053 (for short 'Xylo'). His wife, minor daughter, father and others were also travelling alongwith him. When they reached near Sidh Vinayak Petrol Pump, Xylo was struck by the offending vehicle. As a result of the impact, Raja Ram sustained injuries. He was taken to hosital, where he succumbed to the injuries. FIR No. 395 dated 24.11.2017 was registered at Police Station Nangal Chaudhary.

In the claim proceedings, the Tribunal opined that the accident was result of 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 claimants proved that Raja Ram was Constable in Delhi police and his salary was ₹50,000/- per month. The Tribunal awarded a sum of ₹89,70,248/- alongwith interest at the rate of 9% per annum, 50% future prospects were awarded on the salary proved, 1/3 deduction for self- expenses was made as he was survived by two dependants, multiplier of 17 was applied considering the age of the deceased as 27 years on the date of accident.

Heard learned counsel for the parties and perused the record.

Learned counsel for appellant raises two fold grievances firstly that no deduction of income tax has been made and secondly that the date of birth of the deceased on the record was mentioned as 27.12.1978, yet the Tribunal considered his age as 27 years and applied multiplier of 17.

Learned counsel for the claimants defends the award and resists any reduction.

The deceased was a Constable in Delhi police, his monthly salary was ₹43,629/-, he came within the taxable ambit.

The Supreme Court in ***Manasvi Jain vs. Delhi Transport Corporation, (2014) 3 SCC 22*** has held as under :-

> *"12. This Court in Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 : (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of*

the deceased."

As per the above decision of the Supreme Court, the income tax payable is to be deducted.

As there is nothing on record to give the exact figure of income tax to be deducted, considering the taxation slab and deduction available, ₹6200/- approximately comes as income tax payable and the same is deducted while calculating the compensation.

From the perusal of record i.e. PAN card and employer identity card of deceased, date of birth of deceased was 27.12.1978.

Learned counsel for the claimants is not in a position to dispute the date of birth and as per the said documents he was 38 years plus. 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 15 is to be applied instead of 17. There is no challenge to monthly income of the deceased; 50% future prospects awarded; 1/3rd deduction made for self-expenses and ₹70,000/- awarded under conventional heads.

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

Sr. No.	Particulars	Amount awarded (₹)
1.	Annual income (43629 x12)	5,23,548/-
2.	Less income tax payable	6200/-
	Balance	5,17,348/-
3.	50% future prospects	2,58,674/-
	Total annual dependency	7,76,022/-
4.	1/3rd deduction made for self-expenses	2,58,674/-
5.	Applying multiplier of 15 (5,17,348 x 15)	77,60,220/-
6.	Conventional heads	70,000/-
7.	Total	78,30,220/-

The award dated 3.11.2018 is modified to the extent that the amount awarded of ₹89,70,248/- is reduced to ₹78,30,220/- The claimants shall be entitled to the above said amount alongwith interest as awarded by the Tribunal 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

20.05.2019
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Whether speaking/reasoned Yes
Whether Reportable: Yes