346(1/3)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

FAO No.2257 of 2003
Date of Decision: 24.01.2019

Bimla Devi and others

Appellants

Versus

Jai Parkash and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. K.S. Dhanora, Advocate
for the appellants.

None for respondent No.1.

Mr. Aseem Aggarwal, Advocate
for respondent No.2-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The present appeal has been preferred for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] in MACT Petition No.16, for death of Munshi Ram. His income was ₹4,000/- per month. The claimants were widow, five minor children and parents of the deceased. The Motor Accident Claims Tribunal, Hisar [for brevity 'the Tribunal'] assessed ₹5,18,064/- as compensation alongwith interest @ 9% per annum.

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The driver-cum-owner and insurer of truck (i.e. National Insurance Company Ltd.) bearing registration No. HR-18GA-0151 [hereinafter referred to as 'offending vehicle'] were arrayed as respondents No.1 and 2. The insurer of car bearing registration No. DL-1C-5365 was arrayed as respondent No.3 before the Tribunal.

The brief facts necessary for adjudication of the present appeal are that on intervening night of 1/2-12-2000, Rakesh @ Vikram was driving car bearing registration No. DL-1C-5365 amongst others, Munshi Ram (deceased) was travelling in that Car. On their way, the car was hit by a rashly and negligently driven offending vehicle. Rakesh @ Vikram and Munshi Ram sustained grievous injuries which proved fatal. FIR No. 985, dated 02.12.2000 was registered.

A claim petition was filed under Section 166 of the Act. It was pleaded before the Tribunal that Munshi Ram (deceased) was 25 years of age at the time of accident. The monthly income of the deceased was proved as ₹4,000/- per month; 1/3rd deduction for self-expenses was made and multiplier of '16' was applied. ₹2,000/- each were granted for funeral expenses, transportation and loss of estate.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to contributory negligence of driver of offending vehicle and car of the deceased in the ratio of 50:50.

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

Learned counsel for the appellants contends that no future prospects have been awarded and the Tribunal erred in making 1/3rd deduction for self-expenses as the deceased was survived by more than six dependents. Further that multiplier of '16' has been wrongly applied and the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer while defending the award resisted any further enhancement.

The contentions raised by learned counsel for the appellants deserve acceptance. Having due regard to the decisions 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 awarded as the deceased was 25 years old at the time of accident and was having a fixed salary. The claimants are also 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 the income and age of the deceased at the time of accident.

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. Since the deceased was survived by six dependents, 1/5th deduction for self expenses is to be made.

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

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	4,000/-
40 % Future Prospects	1,600/-
Sub Total	5,600/-
1/5th deduction for self expenses	(-) 1,120/-
Monthly Dependency	4,480/-
Annual Dependency	53,760/-
Applying multiplier of '18'	**9,67,680/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Grand Total	**10,37,680/-**

The award dated 04.02.2003 is modified to the extent that amount of ₹5,18,064/- awarded by the Tribunal is enhanced to ₹10,37,680/-.

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.

However, the issue of contributory negligence has not been pressed, deceased being occupant of the car, but it is worth mentioning here that the issue regarding contributory negligence has been settled in FAO No.1701 of 2003 which has arisen from the same accident.

[AVNEESH JHINGAN]
JUDGE

January 24th, 2019
pankaj baweja

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