IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4684 of 2005

Date of Decision: 11.03.2019

Manoj Shau and another

.......Appellants

Versus

Ravinder Singh and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. B.B.Sharma, Advocate
for the appellants.

Mr.Gulshan Sharma, Advocate
for respondent No.2.

Mr. Neeraj Khanna, Advocate and
Mr. Vikas Sharma, Advocate
for Mr. R.K. Bashamboo, Advocate
for respondent No.3

AVNEESH JHINGAN, J.(oral)

The present appeal is filed by the claimants against award dated 4.3.2005 passed by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The appellants are the parents of Jitender Kumar, a seven years old kid, who lost his life in a motor vehicular accident. Respondent No.1 is driver of truck bearing registration No.PB-12-A-2421 (for short 'the offending vehicle') and respondents No. 2 and 3 are the owner and insurer of the offending vehicle.

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 facts emanating from the record are that on the fateful day of 4.12.2001 Jitender Kumar alongwith his uncle was returning to village Pelsora from Sector-40 Chandigarh. While they were crossing the road, the offending vehicle came from the opposite side and struck Jitender Kumar. As a result of the impact, he died at the spot. FIR No. 59/2001 was registered at Police Station Sector 39, Chandigarh.

In the claim petition 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 insurer was held liable to pay the compensation to claimants but was granted recovery rights. The Tribunal awarded a sum of ₹ 1,50,000/- along with interest at the rate of 9% per annum.

In the claim petition, it was pleaded that the deceased was seven years old at the time of accident. The father of the deceased while deposing before the Tribunal stated that he was a rickshaw pullar and his son was going to Anganwari.

Learned counsel for the appellants contends that the Tribunal erred in awarding a lumpsum amount of ₹ 1,50,000/- instead of applying the multiplier method. His grievance is that no amount has been awarded for funeral expenses.

Learned counsel for the respondents defend the award and argue that the deceased was only seven years old and was not going to school and he was merely going to Anganwari and as such no error is there in award of the Tribunal.

The contentions raised by learned counsel for the appellants deserve acceptance.

As the deceased was only seven years of age, he was not even attending the school and was going only to Anganwari, in such circumstance, it would be very difficult to assess the notional earning.

In ***R.K. Malik and another Versus Kiran Pal and others (2009) 14 SCC 1***, it has been held as under:

> "16. Then, how does one calculate pecuniary compensation for loss of future earnings and loss of dependency of the parents, grand parents etc. in the case of non-working student ? Under the Second Schedule of the Act in case of a non earning person, his income is notionally estimated at Rs. 15,000/- per annum. The Second Schedule is applicable to claim petitions filed under Section 163 A of the Act. The Second Schedule provides for the multiplier to be applied in cases where the age of the victim was less than 15 years and between 15 years but not exceeding 20 years. Even when compensation is payable under Section 166 read with 168 of the Act, deviation from the structured formula as provided in the Second Schedule is not ordinarily permissible, except in exceptional cases. [see Abati Bezbaruah v. Dy. Director General, Geological Survey of India, (2003)3 SCC 148); United India Insurance Company Ltd. v. Patricia Jean Mahajan, 2002(3) RCR(Civil) 534 : (2002)6 SCC 281 and UP State Road Transport Corp. v. Trilok Chandra, 1996(2) RRR 718 : (1996) 4 SCC 362]."

The Supreme Court in ***M.R.Krishna Murthi Versus New India Assurance Company Ltd. and others*** Civil Appeal Nos. 2476-2477 of 2019 decided on 5.3.2019 has held as under:

> 23) From the conjoint reading of the aforesaid judgments, inter alia, following principles can be culled out which would be relevant for deciding the instant appeal:

> (i) In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the poseer would be: what would have been his income had he joined a service commensurating with the said course. That can be the future earning.
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> (ii) There may be cases where the victim is not, at that stage, doing any such course to get a particular job. He or she may be studying in a school. In such a case, future career would depend upon multiple factors like the family background, choice/interest of the complainant to pursue a particular career, facilities available to him/her for adopting such a career, the favourable surrounding circumstances to see which would have enabled the claimant to successfully pick up the said career etc. If the chosen field is employment, then the future earning can be taken on the basis of salary and allowances which are payable for such calling. In case, career is a particular profession, the future earning would depend on host of other factors on the basis of which chances to achieve success in such a profession can be ascertained.
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> (iii) There may be cases like Deo Patodi where even a student, the claimant would have made earnings on part-time basis or would have received offer for a particular job. In such cases, these factors would also assume relevance.
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> (iv) After ascertaining the likely earning of the victim in the aforesaid manner, the nature of injuries and disability suffered as a result thereof would be kept in mind while determining as to how much earning has been affected thereby. Here, impact of injuries on functional disability is to be seen. In case of death of victim, it would result in total loss of earning. In the case of injuries, the nature of disability becomes important. Such an exercise was undertaken in N. Manjegowda case.

> 24) The relevant factors which are brought on record by the learned senior counsel for the appellant are these: the appellant belongs to a family of lawyers as both his parents were senior lawyers practicing in the Supreme Court. Because of his family background, the appellant also wanted to join legal profession, even though at the time of accident, he was studying in school. Having regard to affluent family background, the appellant at the time of accident was studying in prestigious Modern School, Barakhamba Road, New Delhi. All these circumstances clearly indicated that the appellant had a bright future and, therefore, his future earnings could not be considered without keeping in view the aforesaid factors. The appellant also produced evidence in respect of his disability. This disability does not indicate much loss of prospects in earning as it is similar to N. Manjegowda case. Of course, his movements are restricted and he needs a Driver as he is not in a position to drive the car himself. This would hinder the earning capacity to some extent, though not significant extent.

Considering the fact that the accident is of the year 2001 and there is nothing on record to show that the deceased was studying in school, there is no reason to take notional income higher than as given in the Second

Schedule of the Act. The annual notional income of the deceased is assessed as ₹ 15,000/-.

The Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** has held that multiplier of 15 has to be applied where the deceased is below 15 years of age. The relevant para is reproduced as below:

> "12. And further:- It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the Table in Sarla Verma for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the Table in Sarla Verma is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163-A. As regards the cases where the age of the victim happens to be up to 15 years, we are of the considered opinion that in such cases irrespective of Section 163-A or Section 166 under which the claim for compensation has been made,multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma should be followed. This is to ensure that the claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the

> multiplier as indicated in Column (4) of the Table in Sarla Verma should be followed."

The Supreme Court held that where the deceased is below 15 years, multiplier of 15 is to be applied. The claimants shall also be entitled to ₹ 15,000/- for funeral expenses.

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

₹ 15,000/- x 15 = 2,25,000

(Notional income and multiplier of 15)

₹ 15,000/- for funeral expenses.

Total ₹ 2,40,000/-

The award dated 4.3.2005 is modified to the extent that amount awarded of ₹ 1,50,000/- by the Tribunal is enhanced to ₹ 2,40,000/-.

The claimants shall be entitled to enhanced amount alongwith interest as awarded by the Tribunal from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

11.03.2019
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Whether speaking/reasoned Yes
Whether Reportable: Yes