IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 06.03.2019

(1) FAO No. 224 of 2007 (O&M)

Rajpreet Kaur and others .....Appellants

Versus

M/s Shiv Motors (Regd.) Patran and others

......Respondents

(2) FAO No. 258 of 2007 (O&M)

Harpreet Kaur and others .....Appellants

Versus

M/s Shiv Motors (Regd.) Patran and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. B.P.S. Virk, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for Insurance Company.

AVNEESH JHINGAN, J.(oral)

This order shall dispose of two appeals bearing FAO Nos. 224 and 258 of 2007 arising out of same accident and award. These are being disposed of by this common order.

The award dated 29.5.2006 passed by Motor Accident Claims Tribunal, Patiala in MACT case No. 56 dated 8.9.2004 and MACT case No. 58 dated 10.9.2004 has been assailed seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the legal heirs of Kulwant Singh and Onkar Singh.

The facts emanating from the record are that on 20.6.2004 Kulwant Singh and Onkar Singh were going on a scooter bearing registration No. PB-42/6646. Kulwant Singh was the pillion rider on the scooter. They were going from Samana to village Chupki. On their way, the scooter was hit by a bus bearing registration No.PB-11-Q-9095 (hereinafter referred to as 'the offending vehicle'). As a result of the impact, Kulwant Singh and Onkar Singh fell down and suffered grievous injuries. They were removed to Civil Hospital, Samana. Onkar Singh was declared dead on reaching the hospital whereas Kulwant Singh was referred to Rajindra Hospital, Patiala, but he succumbed to the injuries on his way. 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.

FAO No. 258 of 2007

The legal heirs of Kulwant Singh filed a claim petition pleading that the deceased was 39 years of age at the time of accident and was a Government Teacher. He was also doing agricultural work. The Tribunal assessed his monthly earning ₹ 16,000/- by taking his salary and agricultural income. Deduction of the family pension to the tune of ₹ 6770/- per month was made; 1/3rd deduction for self-expenses was made and multiplier of 16 was applied. ₹ 2000/- was awarded for funeral expenses. A total sum of ₹ 7,70,000/- was awarded as compensation alongwith interest at the rate of 7.5% per annum.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellants raises three fold submissions- firstly that the Tribunal erred in deducting family pension; secondly no future prospects have been awarded and lastly the amounts under conventional heads are not awarded as per the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC)***

<u>5157</u>.

Learned counsel for the Insurer argues that the deceased was 39 years of old and multiplier of 16 was wrongly applied instead of 15.

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

No amount can be deducted for family pension. Reliance in this regard is placed on ***Lal Dei and others Versus Himachal Road Transport, 2007(8) SCC 319*** and ***Vimal Kanwar Versus Kishore Dan 2013(7) SCC 476.***

The claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate and ₹ 40,000/- are awarded to the widow for loss of consortium, as per the decision of the Supreme Court in **Pranay Sethi's case (supra).**

The deceased was 39 years of age, therefore, multiplier of 15 is applied as per the decision of the Supreme Court in ***<u>Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.</u>***

Future prospects are to be awarded as per the decision of the Supreme Court in **Pranay Sethi's case (supra).** The age of the deceased will make a difference in awarding the future prospects as there is no clear cut finding that he was 39 years or 40 years of old at the time of accident.

The matter is remitted back to the Tribunal for determining the future prospects after affording opportunity to the parties to adduce evidence with regard to the age of the deceased. The Tribunal shall enhance the compensation in the aforesaid terms and after awarding future prospects according to the age of the deceased.

<u>FAO No. 224 of 2007</u>

Legal heirs of Onkar Singh i.e. widow, minor children and mother, have filed the claim petition pleading that the deceased was 34 years of old and was carrying on agricultural work and dairy farming.

It was claimed that the deceased was earning ₹ 1,05,000/- per annum from agricultural work and ₹ 5000/- by selling milk. The claimants failed to prove the monthly earning of the deceased. The Tribunal assessed the earning of the deceased as ₹ 4000/-per month, 1/3rd deduction for self expenses was made, multiplier of 16 was applied and ₹ 800/- was awarded for funeral expenses and in total a sum of ₹ 5,00,000/- was awarded along with interest at the rate of 7.5% per annum.

Learned counsel for the appellants raises three fold submissions- firstly that no future prospects have been awarded, secondly that the deceased was surived by four dependants thus, 1/3rd deduction has wrongly been made instead of 1/4th and lastly that the amount under conventional heads has not been awarded in view of decision of the Supreme Court in **Pranay Sethi's case (supra).**

Learned counsel for the insurer defends the award and resists any further enhancement.

Having due regard to the decisions of the Supreme Court in **Parnay Sethi's case (supra**) and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480***, since the deceased was 34 years of age and falls within the category of self-employed or fixed wages, 40% future prospects are awarded. The claimants are entitled to ₹ 15,000/- each for funeral expenses and loss of estate and ₹ 40,000/- is awarded to widow for loss of consortium.

There is no dispute as to the monthly income assessed by the Tribunal and multiplier applied. The deceased was survived by four dependants and as per decision of the Supreme Court in **Sarla Verma's case**

(supra), 1/4th deduction for self expenses is made.

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

Sr.No.	Particulars	Amount awarded
1.	Monthly income	₹ 4000/-
2.	40%future prospects	₹ 1600/-
3.	1/4th deduction for self-expenses	₹ 1400/-
4.	Multiplier of 16	4200x12x16=8,06,400/-
5.	Conventional heads	₹ 70,000/-
6.	Total	₹ 8,76,400/-

The award dated 29.5.2006 is modified to the extent that amount awarded of ₹ 5,00,000/- by the Tribunal is enhanced to ₹ 8,76,400/-.

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

Both the appeals are disposed of in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

06.03.2019
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Whether speaking/reasoned Yes
Whether Reportable: Yes