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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

****

FAO No.1276 of 2008 (O&M)
Date of Decision: 14.01.2019

Gopal Devi and others

Appellants

Versus

Satish Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Chetan Kapoor, Advocate
for the appellants.

None for the respondents inspite of service.

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AVNEESH JHINGAN, J (Oral):

The award dated 22.01.2008 passed by the Motor Accident Claims Tribunal, Fatehabad [for brevity 'the Tribunal'] has been challenged by the legal heirs of Leelu Ram seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

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 of truck bearing registration No. HR-56A-0179 [hereinafter referred to as 'offending vehicle'], owner and insurer (i.e. National Insurance Company Ltd.) have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts emanating from the record are that on 24.11.2004, Leelu Ram was driving a Canter bearing registration No.HR-38B-3011. When he reached near Mini Secretariat, Fatehabad, a rashly and negligently driven offending vehicle came from the opposite side and dashed into the canter. As a result of the impact, Leelu Ram sustained injuries and was taken to General Hospital, Fatehabad from where he was referred to Medical College, Rohtak but his family members took him to Sarvodya Multispeciality Hospital, Hisar, where he died on 03.12.2004.

A claim petition was filed under Section 166 of the Act. The Tribunal opined that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer were held jointly and severally liable to pay the compensation.

In the claim petition filed, it was pleaded that the deceased was working as a driver of Canter and was earning ₹3,000/- per month. But, the claimants failed to prove the monthly earning of the deceased and consequently the Tribunal assessed the same as ₹2,500/-, 1/3rd deduction for self-expenses was made and multiplier of '16' was applied as the deceased was 35 years old at the time of accident. The Tribunal awarded a sum of ₹3,61,242/-.

The sum awarded included ₹2,000/- for funeral expenses; ₹5,000/- for loss of consortium and ₹34,370/- for medical expenses.

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

Learned counsel for the appellants argues that no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side. No other issue has been raised.

The contentions raised by learned counsel for the appellants deserve acceptance. Having due regard to the decisions of the Supreme Court in cases 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,*** 40% future prospects are awarded. The claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium.

As there is no dispute with regard to loss of dependency calculated as ₹3,19,872/-, 40% of the said amount i.e. ₹1,27,949/- are awarded as future prospects. The amounts awarded under the conventional heads are enhanced from ₹7,000/- to ₹70,000/- as discussed above.

The net result is that the award dated 22.01.2008 awarding the compensation of ₹3,61,242/- is modified to the extent that the compensation is enhanced by ₹1,90,949/-.

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

The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

January 14th, 2019
pankaj baweja

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