204

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

FAO No.4435 of 2008
Date of Decision: 22.02.2019

Des Raj Lamba and another

Appellants

Versus

Jaswinder Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vivek Khatri, Advocate for the appellants.

Mr. Man Mohan, Advocate for respondent No.3-Insurance Company.

****

AVNEESH JHINGAN, J (Oral):

The award dated 01.05.2008 passed by the Motor Accident Claims Tribunal, Hisar [for brevity 'the Tribunal'] has been assailed in appeal by the parents of Rahul Lamba (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver, registered owner and insurer (i.e. The New India Assurance Company Ltd.) of Bus bearing registration No. HR-38T-0145 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

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 of the case are not in dispute. A motor vehicular accident took place on 16.03.2006. The said accident proved fatal for Rahul Lamba, aged 22/23 years.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the 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 Tribunal assessed monthly earning of the deceased as ₹3,900/-; 1/3rd deduction for self-expenses was made and considering the age of the claimants, multiplier of '10' was applied.

The Tribunal awarded a sum of ₹3,35,000/- alongwith interest @ 9% per annum. The amount awarded included ₹6,200/- for funeral expenses and ₹16,800/- towards medical expenses.

Learned counsel for the appellants raises three-fold issues:

- firstly, no future prospects have been awarded;
- secondly, multiplier of '10' has wrongly been applied considering the age of the claimants;
- lastly, amount awarded under the conventional heads is on the lower side.

Learned counsel for the insurer while defending the award resisted any further enhancement. He contends that 1/3rd deduction for self-expenses has wrongly been made instead of 1/2.

The contention raised by learned counsel for the appellants deserve acceptance. There is no dispute between the parties with regard to income of the deceased assessed by the Tribunal; that he was bachelor and about 22-23 years old.

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 22/23 years of age and would fall under the category of self-employed or a person having fixed wages. The claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate.

Since the deceased was 22/23 years of age, multiplier of '18' is to be applied considering the age of the deceased. The issue regarding application of multiplier considering the age of the deceased and not as per age of the claimants is no longer *res-integra.* The Supreme Court in the case of ***Sube Singh and another vs. Shyam Singh (Dead) and others; 2018 (3) SCC 18*** has held as under:

> *"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the*

> *decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."*
>
> *(emphasis supplied)*

As the quantum of compensation is being revisited, it would be appropriate to make deduction for self-expenses as per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.*** Since the deceased was bachelor, ½ deduction for self-expenses is to be made.

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	3,900/-
40% Future Prospects	1,560/-
Sub Total	5,460/-
½ deduction for self expenses	2,730/-
Monthly Dependency	2,730/-
Annual Dependency	32,760/-
Applying multiplier of '18'	**5,89,680/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Medical Bills (as awarded by the Tribunal)	**16,800/-**
Grand Total	**6,36,480/-**

The award dated 01.05.2008 is modified to the extent that amount of ₹3,35,000/- awarded by the Tribunal is enhanced to ₹6,36,480/-.

The claimants shall be entitled to the 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.

[AVNEESH JHINGAN]
JUDGE

February 22, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes