IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1707 of 2008
DECIDED ON: MAY 09, 2019

BABITA DEVI AND OTHERS

.....APPELLANTS

VERSUS

SANJIV KUMAR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Kumar Sharma, Advocate for
Mr. Vivek Chauhan, Advocate
for the appellants.

Mr. Pardeep Goyal, Advocate
for the respondent-Insurance Company.

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AVNEESH JHINGAN, J (Oral)

The award dated 07.01.2008 passed by the Motor Accident Claims Tribunal, Ambala (for brevity 'the Tribunal') has been assailed by the legal representatives of Chaman Lal (deceased), seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The driver, owner and insurer (i.e. Oriental Insurance Company Ltd.) of tractor trolley bearing registration No. HR-02-E-4436 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents No.1 to 3 respectively in the appeal.

The factum of the accident is not disputed by the parties. A motor vehicular accident took place on 15.11.2006. The accident proved fatal for Chaman Lal. The accident was result of 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.

In the claim proceedings, it was pleaded that the deceased was 10+2 pass and used to do construction work on contract basis. The claimants failed to prove the occupation and earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹2400/-; 1/3rd deduction for self-expenses was made and multiplier of '15' was applied, considering the fact that the deceased was 30 years old at the time of accident. The Tribunal awarded compensation of ₹2,94,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹3000/- each for loss of estate and funeral expenses.

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

Learned counsel for the appellants has raised the following grievances:

1. The income assessed by the Tribunal is on the lower side;
2. No future prospects have been awarded;
3. 1/3rd deduction for self-expenses has wrongly been

made by the Tribunal, as the deceased was survived by widow, one minor son and old aged parents;

4. Multiplier of '15' has wrongly been applied instead of '17';
5. Amounts awarded under the conventional heads are on lower side.

Learned counsel for the insurer contends that the claimants failed to prove the occupation and earning of the deceased and the Tribunal has rightly assessed the monthly income of the deceased by relying upon the minimum wages. He further argues that father cannot be considered a dependant. He resisted any further enhancement.

In case where the claimants failed to prove the occupation and monthly earning of the deceased the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. In order to provide just and equitable compensation the courts have to take into consideration other aspects also. In the present case the deceased was 30 years old and survived by widow, 1½ year old son and old aged parents who are in their 70s. In order to provide just and equitable compensation the monthly income of the deceased is taken as ₹2700/-.

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 below 40 years of age and fell in the category of self-employed or person having fixed wages.

As the quantum of compensation is being revisited, it would be appropriate that compensation under the conventional heads be awarded as per decision of the Supreme Court in ***Pranay Sethi's case*** (supra). The claimants shall be entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the spouse for loss of consortium.

The deceased was survived by widow, one minor son and old aged parents. Father of the deceased was 72 years old at the time of filing of the claim petition. Considering the age of the father of the deceased it cannot be said that he was not dependant upon the earning of his son in his old age.

In consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21;*** 1/4th deduction for self-expenses made, as the deceased was survived by four dependants.

As per the pleadings, the deceased was 30 years old at the time of accident. Even, in the post-mortem report the age of deceased was depicted as 30 years. The Tribunal erred in applying the multiplied of '15'. Having due regard to the decision of the Supreme Court in ***Sarla Verma's*** case (supra), multiplier of '17' is applied.

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

	Head	**Compensation awarded**
(i)	Monthly Income	₹ 2700/- per month
(ii)	Future prospects at 40%	₹ 1080/- per month
(iii)	Total Income	₹ 3780/- per month
(iv)	Deduction of personal expenses	₹ 945/- (i.e. 1/4 of total income)
(v)	Multiplier	17 (as per age of deceased)
(vi)	Loss of income	2835x12x17= ₹5,78,340/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of Consortium	₹ 40,000/-
	Total Compensation awarded	₹6,48,340/-

The award dated 07.01.2008 is modified to the extent that amount of ₹2,94,000/- awarded by the Tribunal is enhanced to ₹6,48,340/-. The claimants shall be entitled to the enhanced amount alongwith interest @ 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

MAY 09, 2019
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Whether speaking/ reasoned : Yes
Whether reportable : Yes