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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**FAO No.5280 of 2009
Date of Decision: 21.05.2019**

Kamlesh and others

Appellants

Versus

Zile Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Akshat Mittal, Advocate for
Mr. Sachin Mittal, Advocate
for the appellants.

None for respondent No.1 inspite of service.

Ms. Jaspreet Kaur Sonal, Advocate for
Mr. Ashish Yadav, Advocate
for respondent No.2.

None for respondent No.3-insurer, inspite of service.

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AVNEESH JHINGAN, J (Oral):

The legal representatives of Rajiv Mohan filed this appeal under Section 173 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] against award dated 10.04.2009 passed by the Motor Accident Claims Tribunal, Gurgaon [for brevity 'the Tribunal'] seeking enhancement of compensation awarded under Section 166 of the Act.

The driver, owner and insurer (i.e. ICICI Lombard General Insurance Company Ltd.) of Bus bearing registration No. HR-55F-5744 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts emanating from the record are that on 27.11.2007, Rajiv Mohan was riding Scooter bearing registration DL-3SR-3875. he was going towards village Ismailpur. When he reached near Budha Mata, the Scooter was struck by the offending vehicle. As a result of the impact, he fell down, sustained injuries and died at the spot. FIR No.196, dated 27.11.2007 was registered at Police Station Farrukh Nagar.

The Tribunal opined that 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 working as Office Boy with M/s Royal Facilities Management Service, New Delhi and was getting a salary of ₹8,000/- per month. The claimants failed to adduce any worth reliance evidence to prove earning of the deceased. The employer deposed that he had appointed the deceased as an Office Boy but he failed to produce any record with regard to salary paid to the deceased. The Tribunal assessed monthly income of the ₹3,600/-; 1/3rd deduction for self-expenses was made and multiplier of '16' was applied, considering the age of mother of the deceased. A total sum of ₹3,12,400/- was awarded alongwith interest @ 9% per annum. The amount awarded included ₹10,000/- for funeral expenses and transportation.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellants contends that the income of the deceased assessed by the Tribunal is less than minimum wages for an unskilled labourer prevalent in the State at the relevant time. The grievance raised is that no future prospects have been awarded. It is submitted that the deceased was survived by four dependents, 1/3rd deduction for self-expenses has wrongly been made instead of 1/4th. Prayer is made that amounts under the conventional heads be awarded as per the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 (SC) 5157.***

Learned counsel for the respondent No.2 while defending the award argues that the claimants failed to prove monthly earning of the deceased. He defends the income assessed by the Tribunal.

As per the pleadings and deposition of PW-5, the deceased was working as Office Boy. There was no proof with regard to salary paid to him, in such circumstances, one of the safest yardstick is to rely upon the minimum wages prevalent in the State at relevant time. In order to award just and equitable compensation, monthly earning of the deceased is assessed as ₹3,800/- per month.

In consonance with the decision 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 deceased fell in the category of self-employed or having fixed wages.

The deceased was survived by widow mother and three brothers and sisters who were minor at the time of accident. In such circumstances, it can be held that minor brothers and sisters were dependant on income of the deceased. As per 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 is made.

The deceased was 21 years old at the time of accident. In view of decision of the Supreme Court in ***Sarla Verma's*** case (supra), multiplier of '18' is applied.

The issue regarding applying multiplier keeping in view the age of the deceased and not 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)*

The Supreme Court in its recent decision in ***M/s. Royal Sundaram Alliance Insurance Company Ltd. v. Mandala Yadagari Goud and others, AIR 2019 SC 1825,*** has reiterated this fact and held as under:-

"9. The focus for determination of such claim is the deceased and what would be his contribution towards the dependents would he to be alive, for the benefits of the dependents. It is trite to say, and in fact conceded by the learned counsel for the insurance company, that in case the deceased is a married person, it is the age of the deceased which is to be taken into account. The question is whether in case the deceased is a bachelor, a different principle for calculation of the multiplier should be applied by shifting the focus to the age of the claimants? We are of the view that the answer to this question should be in the negative.

10. We may also note the importance of applying uniform settled principle to such cases. Certainty of law is important. Once the law is settled, it should not be repeatedly changed as that itself causes confusion and litigation. It is with this objection that this Court has endeavoured to settle legal principles in respect of the matter in question.

11. A reading of the judgment in Sube Singh (supra) shows *that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on : (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf.*

12. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.

13. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

As the quantum of compensation is being revisited, it would be appropriate that compensation under the conventional heads be awarded as per the decision of the Supreme Court in ***Pranay Sethi's case*** (supra). The claimants are entitled to

Rs.15,000/- each for funeral expenses and for loss of estate.

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	3,800/-
40 % Future Prospects	1,520/-
Sub Total	5,320/-
¼ deduction for self expenses	1,330/-
Monthly Dependency	3,990/-
Annual Dependency	47,880/-
Applying multiplier of '18'	**8,61,840/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**8,91,840/-**

The award dated 10.04.2009 is modified to the extent that amount of ₹3,12,400/- awarded by the Tribunal is enhanced to ₹8,91,840/-.

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 21, 2019
pankaj baweja

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