IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1869 of 2013 (O&M)

Date of Decision: 16.05.2019

Smt. Urmila and another

.......Appellants

Versus

Amit Kumar and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajat Garg, Advocate for
Mr. Aditya Jain, Advocate
for the appellants.

Mr. Manmohan Singh, Advocate
for insurance company.

AVNEESH JHINGAN, J.(oral)

The award dated 31.10.2012 passed by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal') has been challenged by the parents of Aadesh by filing an appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act').

Respondents are driver of vehicle bearing registration No.HR-26-AN-3493, (for short 'the offending vehicle') owner and insurer (i.e. Reliance General Insurance Company) of offending vehicle.

The facts necessary for adjudication of the present appeal are that on 9.8.2011, Raj Kumar and Naveen were going on Scooty bearing registration No.HR-26AUA-7305 to Gurgaon. On their way, they met Aadesh and also took him with them. When they were about to start their journey, the scooty was hit by the offending vehicle, as a result of the impact, the riders of the scooty sustained grievous injuries. Aadesh was taken to Government Hospital, Gurgaon, where he succumbed to injuries. FIR No. 274 dated 9.8.2011 was registered.

In the claim proceedings the Tribunal opined that the accident was result of rash and negligent driving of the offending vehicle. The owner, driver and insurer were held jointly and severally liable to pay compensation.

The claimants pleaded that the deceased was 19 years of age and was working in Himalaya Group Dehradoon and his earning was claimed as ₹12,000/- per month. The claimants failed to prove the occupation and earning of the deceased. The Tribunal relying upon the minimum wages assessed the monthly earning as ₹4500/-, ½ deduction was made for self-expenses as he was a bachelor and multiplier of 18 was applied. The Tribunal awarded a sum of ₹5,01,000/- along with interest at the rate of 8% per annum.

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

Learned counsel for the appellants argues that the income assessed by the Tribunal is on lower side; no future prospects have been awarded and the amount awarded under conventional heads are on lower side.

Learned counsel for the insurer argues that the claimants failed to prove the earning and occupation of the deceased. There was no evidence worth reliance produced before the Tribunal. He further argues that no amount is to be awarded for loss of love and affection.

In the claim proceedings, apart from bald statement, no cogent evidence was produced with regard to earning and occupation of the deceased. In cases where the claimants failed to prove the earning of the deceased and occupation, one of the safest yardstick is to rely upon the minimum wages. The Tribunal assessed the monthly income relying upon the minimum wages. Even in appeal learned counsel for the appellants was not able to establish either the qualification or the occupation of the deceased. No case is made out to enhance the income assessed by the Tribunal.

As per 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 loss of dependency calculated by the Tribunal is being sustained, 40% as future prospects on the said amount is awarded i.e. ₹1,94,400/-

There is no dispute with regard to deduction made for self expenses and multiplier applied.

As per the decision of the Supreme Court in **Pranay Sethi's case (supra),** ₹15,000/- each is awarded to the claimants for funeral expenses and for loss of estate. No amount is awarded for loss of love and affection.

The net effect is that the amount awarded under the conventional heads is enhanced by ₹15,000/-.

The award dated 31.10.2012 is modified to the extent that the amount awarded by the Tribunal of ₹5,01,000/- is enhanced by ₹2,09,400/-. The claimants shall be entitled to the enhanced amount alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till realisation of the amount.

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

16.05.2019
reema

Whether speaking/reasoned Yes
Whether Reportable: No