IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1592 of 2014
DECIDED ON: MAY 16, 2019

SMT. MAMTESH AND OTHERS

.....APPELLANTS

VERSUS

SOMBIR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.K. Agnihotri, Advocate
for the appellants.

Mr. Jitender Singh, Advocate
for respondents No.1 and 2.

Mr. M.B. Jain, Advocate for
Mr. Rajesh Bansal, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral)

The award dated 02.08.2013 passed by the Motor Accident Claims Tribunal, Karnal (for brevity 'the Tribunal') has been assailed by the legal representatives of Subhash (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. Iffco Tokio General Insurance Company Ltd.) of dumper bearing registration No. HR-66-

3833 (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 the intervening night of 08/09.05.2012. The accident proved fatal for Subhash, aged 29 years. 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 claimed that the deceased was working as labourer in a Cement Factory and was earning ₹10,000/- per month. No evidence worth reliance was produced with regard to the monthly earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹4500/-; $1/4^{th}$ deduction for self-expenses was made and multiplier of '17' was applied. The Tribunal awarded compensation of ₹7,03,500/- alongwith interest @ 7% per annum. The amount awarded included ₹5000/- for loss of consortium and ₹10,000/- for 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 less than the minimum wages prevalent in the State at the time of accident;
2. No future prospects have been awarded;

3. The amounts awarded under the conventional heads are on lower side and no amount has been awarded for loss of estate.

Learned counsel for the insurer defends the award and argues that the Tribunal has rightly assessed the monthly income of the deceased, as the claimants failed to prove the same.

There is no challenge to the age of the deceased, multiplier applied of '17' and deduction made of 1/4th for self-expenses.

Albeit the claimants failed to prove the monthly earning of the deceased, in such cases, the safest yardstick to rely upon the minimum wages prevalent in the State at the time of accident. Taking clue from the minimum wages, considering the fact that the deceased was survived by widow, three minor children and parents and to award just and equitable compensation, the monthly income of the deceased is assessed as ₹5000/-

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 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. Another amount of ₹40,000/- is awarded to the spouse for loss of consortium.

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

	Head	**Compensation awarded**
(i)	Monthly Income	₹ 5000/- per month
(ii)	Future prospects at 40%	₹ 2000/- per month
(iii)	Total Income	₹ 7000/-
(iv)	Deduction of personal expenses	₹1750/- (i.e. 1/4th of total income)
(v)	Multiplier	17 (as per age of deceased)
(vi)	Loss of income	5250x12x17= ₹10,71,000/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹11,41,000/-

The award dated 02.08.2013 is modified to the extent that amount of ₹7,03,500/- awarded by the Tribunal is enhanced to ₹11,41,000/-. 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 in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

MAY 16, 2019
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Whether speaking/ reasoned : Yes
Whether reportable : Yes