IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 5.2.2019

(1) **FAO No. 3308 of 2013**

Ravinder and others

.. Appellants

v.

Naveen Kumar and others

.. Respondents

(2) FAO No. 5067 of 2013

Virender and others

.. Appellants

v.

Naveen Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjeev Kodan, Advocate for the appellants.
Mr. S. P. Chahar, Advocate for respondent No. 1.
Mr. Lalit Garg, Advocate for respondent No. 2.
Mr. R. K. Bashamboo, Advocate for respondent No. 4.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 3.8.2010 passed by the Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal') in MACT Petition Nos. 48 and 76 of 2008 has been assailed in two appeals by the claimants seeking enhancement of compensation awarded by the Tribunal under Section 166 of the Motor Vehicles Act.

FAO No. 3308 of 2013 has been filed by the legal heirs of Sudesh Kumari (deceased) seeking enhancement of compensation of ₹11,60,000/- awarded along with interest @ 7.5% per annum.

FAO No. 5067 of 2013 has been filed by the legal heirs of Susheela (deceased) seeking enhancement of compensation of ₹10,50,800/- awarded along with interest @ 7.5% per annum.

The aforesaid two appeals are being disposed of by a common order as both the appeals have arisen out of the same accident and same award.

The facts in brief are that a motor vehicular accident took place on 19.6.2007. Sudesh Kumari and Susheela were travelling in a Maxi Cab Jeep bearing registration No. HR19A-9195. When the jeep reached near Madana Chowk at Jhajjar-Rohtak road, it was hit by a rashly and negligent driven Canter bearing registration No. HR63-6199 (hereinafter referred to as 'the offending vehicle'). As a result of the accident, Sudesh Kumari and Susheela suffered grievous injuries which proved fatal for them.

In the claim petitions filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the Tribunal opined that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and the insurer (i.e. Oriental Insurance Company Limited) of the offending vehicle were held jointly and severally liable to pay the compensation.

FAO No. 5067 of 2013

In the claim petition filed by the legal heirs of Susheela, it was pleaded that the deceased was running a primary school in village Dhaur, District Jhajjar and was earning 17,000/- per month. It was proved that she was having qualifications of M.A. M.Ed. and diploma in Prabhakar. Mahabir son of Chandgi Ram deposed before the Tribunal that the deceased was running a school and she was giving tuitions to the students. He further deposed that 800/- per month was being paid to Chaupal Samiti as the school was being run in the chaupal of the village. The claimants failed to substantiate the monthly earning of the deceased. The Tribunal considering the qualifications of the deceased and the evidence produced, assessed the monthly earning of the deceased as ₹8,000/- per month, 1/3rd deduction for self-expenses was made and multiplier of 16 was applied. A sum of ₹14,000/- was awarded for funeral expenses and loss of consortium.

Learned counsel for the appellants contends that no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer argues that the claimants failed to prove the monthly earning of the deceased, the income assessed is on the higher side.

It is pertinent to mention that there is no dispute regarding age of the deceased, deduction made for self expenses and multipllier applied, hence they are kept intact.

The contention raised by learned counsel for the appellants deserves acceptance. In the present case, the claimants had discharged their onus with regard to the qualification of the deceased and the evidence adduced to the effect that she was running a school in the village, which was not rebutted by the respondents. In such circumstances, no interference is called for in the monthly income of the deceased as assessed by the Tribunal.

In view of the decisions of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157** and **Hem Raj v. Oriental Insurance Company Ltd., 2018 (2) PLR 480,** 40% future prospects are awarded. As loss of dependency of ₹10,36,800/- calculated by the Tribunal is not being disputed, 40% of the said amount i.e. ₹4,14,720/ is awarded for future prospects.

The amounts awarded under the conventional heads are made in consonance with the decision of the Supreme Court in **Pranay Sethi's** case (supra). The claimants are awarded ₹15,000/- each for funeral expenses and loss of estate and ₹40,000/- for loss of consortium. The amount awarded under the conventional heads is enhanced from ₹14,000/- to ₹70,000/-.

In view of the above discussion, the award dated 3.8.2010 is modified to the extent that the amount awarded by the Tribunal to the tune of ₹10,50,800/- is enhanced to ₹15,21,520/-. The appellants 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 amount.

FAO No. 3308 of 2013

In the claim petition filed by the legal heirs of Sudesh Kumari, it was pleaded that the deceased was running a school under the name and style of Sindhu Public School in village Nonand and was earning ₹15,000/- per month. It was proved that she was having qualifications of M.A. M.Ed. and diploma in Prabhakar. PW5-Bijender Singh deposed before the Tribunal that the deceased was running Sindhu Public School and his daughter and niece were studying in that school. But the claimants failed to substantiate the monthly earning of the deceased. The Tribunal considering the qualification of the deceased and the evidence produced, assessed the monthly earning of the deceased as ₹8,000/- per month, 1/4th deduction for self-expenses was made and multiplier of 16 was applied. A sum of ₹8,000/- was awarded for funeral expenses and loss of consortium.

Learned counsel for the appellants contends that no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer argues that the claimants failed to prove the monthly earning of the deceased and the income assessed is on the higher side.

It is pertinent to mention that there is no dispute regarding age of the deceased, deduction made for self expenses and multipllier applied, hence these are kept intact.

The contention raised by learned counsel for the appellants deserves acceptance. In the present case, the claimants had discharged their onus with regard to the qualification of the deceased and the evidence adduced to the effect that she was running a school in the village, which was not rebutted by the respondents. In such circumstances, no interference is called for in the monthly income of the deceased as assessed by the Tribunal.

In view of the decisions of the Supreme Court in **Pranay Sethi** and **Hem Raj cases (supra),** 40% future prospects are awarded. As loss of dependency of ₹11,52,000/- calculated by the Tribunal is not being disputed, 40% of the said amount i.e. ₹4,60,800/- is awarded for future prospects.

The conventional heads are made in consonance with the decision of the Supreme Court in **Pranay Sethi's** case (supra). The claimants are awarded ₹15,000/- each for funeral expenses and loss of estate and ₹40,000/- for loss of consortium. The amount awarded under the conventional heads is enhanced from ₹8,000/- to ₹70,000/-.

In view of the above discussion, the award dated 3.8.2010 is modified to the extent that the amount awarded by the Tribunal to the tune of ₹11,60,000/- is enhanced to ₹16,82,800/-. The appellants 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 amount.

Both the appeals stand disposed of in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

5.2.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No