IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210

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FAO No. 1388 of 2015
Date of Decision : 22.4.2019

Kishni and others ....**Appellants**

v.

Rajbir Singh and others ....**Respondents**

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ajay Shekhawat, Advocate, for the appellants

Mr. Rajneesh Malhotra, Advocate, for respondent No.3

AVNEESH JHINGAN, J. (Oral)

The award dated 8.5.2014 passed by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') has been assailed by the legal representatives of Rajesh (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The factum of accident is not disputed by the parties. The motor vehicular accident took place on 30.12.2011. The accident was result of rash and negligent driving of tralla bearing registration No. HR-63-B-0042 (hereinafter referred to as 'offending vehicle'). The accident proved fatal for Rajesh, who was driving truck bearing registration No. HR-55-C-1983. FIR bearing No. 1168 dated 30.12.2011 was registered at Police Station Vrindavan, Mathura. The Tribunal held the owner, driver and insurer jointly and severally liable to pay compensation.

In the claim proceedings it is pleaded that the deceased was 35 years of age, working as a driver and earning ₹10,000/-per month, the claimants failed to prove the earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹4,500/-, 1/4th deduction was made and multiplier of 16 was applied. The claimants were held entitled for a compensation of ₹6,88,000/-alongwith interest @ 7.5% per annum, which includes ₹20,000/-for love and affection, ₹10,000/- for transportation and ₹10,000/-for funeral expenses under the conventional heads.

The Tribunal ordered that in case the payment is made within two months, the claimants shall be entitled to interest @ 7.5% per annum and in case of default, @ 9% per annum from the date of filing of the claim petition till the realisation of the amount.

Learned counsel for the appellants raised four fold grievances; firstly, that the income assessed is less than minimum wages prevalent at the relevant time; secondly, that no future prospects have been awarded; thirdly, that amount awarded conventional heads is on lower side, and lastly, that the Tribunal erred in awarding conditional interest.

Learned counsel for the insurer defended the award and resisted any enhancement. He argued that no amount be awarded for loss of love and affection. From the perusal of the record it is evident that deceased was a driver and even at the time of accident he was driving the truck, in such circumstances, it would be appropriate to treat him as an unskilled labour. Taking into consideration the minimum wages prevalent at the time of accident, his monthly income is assessed ₹5000/- to award just and equitable compensation.

In consonance of the decision of the Hon'ble Supreme Court in

"**National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 5157**" and "**Hem Raj v. Oriental Insurance Company Ltd. 2018 (2) PLR 480**", as deceased was in the age group of 30-40 years and fell in category of self employed and having fixed wages, 40% of future prospects are awarded.

As the quantum of compensation is re-visited, the amounts awarded under the conventional heads as per the decision of the Hon'ble Supreme Court in **Pranay Sethi's case** (supra). The claimants shall be entitled to ₹ 15,000/-each for funeral expenses and loss of estate and ₹ 40,000/-for loss of consortium to the widow. There is no challenge to deduction made and multiplier applied by the Tribunal.

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

Sr. No.	Particulars	Amount awarded in ₹
1	Monthly Income	5000
2	40% Future prospects (plus)	2000
		7000
3	1/4th deduction for self expenses (minus)	-1750
		5250
4	Multiplier of 16 (5250x12x16)	10,08,000
5	Under conventional heads	70000
	Total Compensation	10,78,000

The compensation awarded by the Tribunal is enhanced from ₹6,88,000/- to ₹10,78,000/-.

The Tribunal erred in awarding conditional interest. The Supreme Court in '**National Insurance Co. Ltd. v. Keshav Bahadur and others, 2004 (2) SCC 370**', held as under :

"Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from the particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore, directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal."

In view of the above ratio, the interest prevalent at the relevant time, the claimants are held entitled to the amount of compensation alongwith interest @ 8% per annum from the date of filing of the claim petition till its realisation.

The appeal stands disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

22.4.2019
Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No