IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 26.02.2019

(1) FAO No. 1918 of 2015 (O&M)

The Oriental Insurance Company Limited

.......Appellant

Versus

Kanshi Ram and others

......Respondents

(2) FAO No. 4644 of 2015 (O&M)

Kanshi Ram and others

.......Appellants

Versus

Rajpal and another

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. D.P. Gupta, Advocate
for the appellant in FAO No. 1918 of 2015 and
for respondent no. 2 in FAO No. 4644 of 2015.

Mr. Karan Singh, Advocate
for the appellants in FAO No. 4644 of 2015 and
for respondents No. 1 to 3 in FAO No. 1918 of 2015.

AVNEESH JHINGAN, J.(oral)

These are two appeals filed against award dated 23.1.2015 passed by the Motor Accident Claims Tribunal, Yamuna Nagar, at Jagadhri (for short 'the Tribunal') under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') in MACT Case No. 60 of 2013.

One appeal is filed by the insurer of truck bearing registration No. HR58-A-0187 (for short 'the offending vehicle') and another by the claimants who are legal heirs of Ved Parkash. The grievance raised in both the appeals is with regard to quantum of compensation awarded by the Tribunal. Hence, these are being decided by a common order.

The brief facts are that on 6.7.2013 Ved Parkash along with his wife Jigyasa was returning to his village Silli Kanal on a motor cycle bearing registration No. HR-02AC-1271. On their way, the motor cycle was struck by the offending vehicle. Ved Parkash got trapped in the tyres of the offending vehicle and was dragged to a long distance. Both the riders of the motor cycle died at the spot. FIR No. 354 dated 6.7.2013 was registered at Police Station Yamuna Nagar.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to 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 compensation.

In the claim petition filed, it was pleaded that the deceased was 54 years of age, he was an agriculturist and was doing dairy farming. The claimants were able to prove that the deceased was earning worth ₹ 60,000/- (approx.) per annum by supplying the milk to VITA (an unit of Haryana Diary Department). PW5-Rishipal deposed before the Tribunal that the deceased was cultivating his land and land of his brother. The Tribunal consdering that the oral testimony of PW5 was not enough to prove the agricultural income of the deceased and considering the income of the milk supplied, assessed the monthly earning of the deceased as ₹ 10,000/-; 15% future prospects were awarded; 1/3rd deduction for self-expenses was made and multiplier of 11 was applied. A sum of ₹ 10,17,000/- was awarded alongwith interest at the rate of 7.5% per annum. The amount awarded included ₹ 5000/- for funeral expenses.

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

Learned counsel for the insurer raised two fold arguments. Firstly that the income of ₹ 10,000/- assessed by the Tribunal is on higher side as the minimum wages for a skilled labourer at the time of accident were ₹ 5600/-. Secondly that 15% future prospects have wrongly been awarded instead of 10%.

Learned counsel for the claimants defends the award and contended that the deceased was an agriculturist and was supplying milk, he cannot be treated as an un-skilled labourer and his income cannot be restricted to minimum wages prevelant in the State at the time accident. He further argues that the amount under conventional heads be awarded as per decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157***.

There is no dispute between the parties with regard to age of the deceased; 1/3rd deduction made for self-expenses and multiplier applied of 11.

The claimants were able to prove that the deceased was doing dairy farming and supplying milk to VITA. It has also come on record that he was supplying milk worth ₹ 5000/- per month. Albeit, the claimants failed to produce any relevant evidence with regard to agricultural earning of the deceased. But there was deposition of PW-5 to the effect that the deceased was cultivating his land and land of his brother, but he failed to produce any document with regard to ownership of the land. In such circumstances, considering the minimum wages and the income from selling milk, the monthly income of the deceased is assessed as ₹ 8500/-.

The contention raised by counsel for insurer regarding future prospects deserves acceptance.

Having due regard to the decision of the Supreme Court in Pranay Sethi's case (supra) and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480.***, 10% future prospects are awarded as the deceased was in the age group of 50-60 and fall in the category of self-employed and having fixed wages. The claimants are also entitled to ₹ 15,000/- each for funereal expenses and for loss of estate.

In view of the above discussion, the compensation is recalculated as under:

Sr. No.	Particulars	Amount awarded
1.	Monthly income	₹ 8500/-
2.	10% future prospects	₹ 850/-
3.	1/3rd deduction for self-expenses	₹ 3117 /-
4.	Applying multiplier of 11	6233x12x11 ₹ 8,22,756/-
5.	Conventional heads ₹ 15,000/- each for funeral expenses and loss of estate.	₹ 30,000/-
6.	Total	₹ 8,52,756/-

The award dated 23.1.2015 is modified to the extent that amount awarded of ₹ 10,17,000/- by the Tribunal is reduced to ₹ 8,52,756/-.

Vide order dated 23.3.2015, 50% of the amount awarded was ordered to be stayed. The claimants shall be entitled to the balance amount along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization of the amount.

Both the appeals are disposed of in the above said terms.

(AVNEESH JHINGAN)
JUDGE

26.02.2019
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Whether speaking/reasoned Yes
Whether Reportable: Yes