205(I)

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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FAO No.3783 of 2014 (O&M)
Date of Decision : 05.04.2019

New India Assurance Company Ltd.

Appellant

Versus

Ram Rati and others

Respondents

FAO No.6785 of 2016 (O&M)

Ram Rati and another

Appellants

Versus

Mohinder Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vinod Gupta, Advocate
for the appellant [in FAO No.3783 of 2014]
for respondent No.3 [in FAO No.6785 of 2016].

Mr. Sanjeev Majra, Advocate
for the appellants [in FAO No.6785 of 2016]
for respondents No.1 and 2 [in FAO No.3783 of 2014].

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AVNEESH JHINGAN, J (Oral)

The award dated 20.03.2014 passed by the Motor Accident Claims Tribunal, Kaithal [for brevity 'the Tribunal'] has been assailed by filing two cross appeals. One by the insurer of vehicle bearing registration No. HR-38H-9482 [hereinafter referred to as 'offending vehicle'] and another by parents of Rati Dutt (deceased). The issue involved in both the appeals is with regard to quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

Since both the appeals arise from same accident and one award, these are being disposed of by a common order.

The parents of Rati Dutt were claimants and owner, driver & insurer of the offending vehicle were respondents before the Tribunal.

The facts emanating from the record are that on 27.09.2011 at about 05:15 P.M., the offending vehicle was parked in TVS Godown, Prince Hotel, situated on Rathiwas Cut on National Highway No. 8. After some time, the offending vehicle was reversed, Rati Dutt who was getting the offending vehicle reversed, got entagled between vehicle No. HR-038H-2322 and the offending vehicle. As a result he sustained injuries and was taken to General Hospital, Gurgaon where he was declared dead. FIR No.180, dated 28.09.2011 was registered against driver of the offending vehicle.

In the claim proceedings, the Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the 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 pleaded that the deceased was 25 years old and he was working as a Driver with

M/s Manak Road Line, Himilton Road, Kashmiri Gate, Delhi. His monthly earning was claimed as ₹20,000/- per month. A statement was made by brother of the deceased who was working as a driver with the same company, that deceased was getting ₹20,000/- per month. The Tribunal commented upon the conduct of respondent No.2 that it was difficult to secure the presence of witness and it tried its level best to conceal the income of the deceased. Be that as it may, Ashok Kumar (PW-3) Assistant Manager of the respondent-Company deposed before the Tribunal to state that the deceased was not a permanent employee and was being paid ₹400/- per trip. He produced vouchers for seven months i.e. 01.12.2011 to 30.06.2012. As per these vouchers, on an average, there were 15 trips per month. In his cross-examination, he stated that the record produced by him is with regard to a particular Truck, which only used to have local trips and the deceased was driver of the said offending vehicle. The Tribunal assessed earning of the deceased as ₹12,000/- per month; 1/3rd deduction for self-expenses was made and multiplier of '12' was applied considering the age of mother of the deceased. The Tribunal awarded compensation of ₹12,27,000/- alongwith interest @ 9% per annum. The amount awarded included ₹50,000/- for loss of love and affection and ₹25,000/- for funeral expenses.

Heard learned counsel for the parties and perused the record.

Learned counsel for the insurer contends that the

Tribunal erred in assessing monthly earning of the deceased as ₹12,000/- which is much more than minimum wages prevalent at the relevant time. The grievance raised is that 1/3rd deduction for self-expenses has been made instead of ½, as the deceased was a bachelor. Further grievance raised is that amounts awarded under the conventional heads are on the higher side.

Learned counsel for the claimants argues that statement of brother of the deceased was enough to prove earning of the deceased. He further states that for the reasons best known to the employer, entire record with regard to earning of the deceased was not produced. His grievance is that no future prospects have been awarded; multiplier of '12' has been applied instead of '18' and no amount has been awarded for loss of estate.

From the perusal of the evidence available on record, one thing is established that the deceased was working as a Truck Driver with M/s Manak Roadlines. The only grey area left is earning of the deceased.

Considering the fact that as per vouchers produced by PW-3, average income of the deceased was established atleast ₹6,000/-. The deposition of PW-3 does not inspire confidence to the extent that it can be concluded that the deceased was earning only ₹6,000/-. On one hand, he deposed that the deceased was not a permanent employee and was being paid ₹400/- per trip. On the other hand, he produced vouchers with regard to only one Truck and further stated that the deceased was the driver on the said truck only. He was blowing hot and cold in one go. In absence of any solid foundation with regard to income of the deceased, considering various aspects, income of the deceased is assessed as ₹8,000/- to award just and equitable compensation.

In consonance with 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. The claimants shall also be entitled to ₹15,000/- each for funeral expenses and for loss of estate. No amount is awarded for loss of love and affection.

As per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** ½ deduction for self-expenses is made as the deceased was bachelor at the time of accident.

As the deceased was 25 years old at the time of accident, multiplier of '18' is applied. The issue that multiplier is to be applied considering the age of the deceased and not of the claimants is no longer *res-integra.*

The Supreme Court in the case of ***Sube Singh and another vs. Shyam Singh (Dead) and others; (2018) 3 SCC 18*** has held as under:

> *"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed*

the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. <u>In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."</u>

(*emphasis supplied)*

The Supreme Court in its recent decision in <u>***M/s. Royal Sundaram Alliance Insurance Company Ltd. v. Mandala Yadagari Goud and others, Civil Appeal No. 6600 of 2015. D/d. 9.4.2019***</u> has reiterated this fact and held as under:-

"9. The focus for determination of such claim is the deceased and what would be his contribution towards the dependents would he to be alive, for the benefits of the dependents. It is trite to say, and in fact conceded by the learned counsel for the insurance company, that in case the deceased is a married person, it is the age of the deceased which is to be taken into account. The question is whether in case the deceased is a bachelor, a different principle for calculation of the multiplier should be applied by shifting the focus to the age of the claimants? We are of the view that the answer to this question should be in the negative.

10. We may also note the importance of applying uniform settled principle to such cases. Certainty of law is important. Once the law is settled, it should not be repeatedly changed as that itself causes confusion and *litigation. It is with this objection that this Court has endeavoured to settle legal principles in respect of the matter in question.*

11. A reading of the judgment in Sube Singh (supra) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on : (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf.

12. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.

13. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be *taken into account and not the age of the dependents."*

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

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	8,000/-
40% Future Prospects	3,200/-
Sub Total	11,200/-
½ deduction for self expenses	5,600/-
Monthly Dependency	5,600/-
Annual Dependency	67,200/-
Applying multiplier of '18'	**12,09,600/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**12,39,600/-**

The award dated 20.03.2014 is modified to the extent that amount of ₹12,27,000/- awarded by the Tribunal is enhanced to ₹12,39,600/-.

Vide order dated 29.05.2014, disbursement of 50% amount was stayed subject to deposit of said amount alongwith interest within four weeks.

The claimants shall be entitled to the balance amount alongwith interest as awarded by the Tribunal from the date of filing of the claim petition till realization of the amount.

Both the appeals are disposed of in aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

April 05, 2019

pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes