IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4111 of 2014

Date of Decision: 06.05.2019

Bimla Devi and another

.......Appellants

Versus

Rajinder Kumar and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Arun Singal, Advocate
for the appellants.

Mr. Vinod Chaudhary, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.(oral)

The award dated 3.1.2014 passed by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') has been assailed, seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') on account of death of Ramesh Kumar.

Appellants are widow and son of deceased-Ramesh Kumar.

Driver, owner and insurer (i.e. The Oriental Insurance Company Limited) of truck bearing registration No. RJ-14/2G-2694 (for short 'the offending vehicle') have been arrayed as respondents No. 1 to 3 and daughters of the deceased-Ramesh Kumar have been arrayed as proforma respondents No. 4 and 5.

The factum of accident is not disputed by the parties. A motor vehicular accident took place on 23.11.2008. The accident was result of rash and negligent driving of the offending vehicle. Ramesh Kumar sustained grievous injuries in the accident. He remained admitted in various hospitals and ultimately was admitted in PGIMS Rohtak for treatment. He succumbed to injuries on 1.9.2009. 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 proved that the deceased was an Ex-Army personnel, he was getting pension ₹ 4,500/- per month. It was claimed that he was working as Supervisor with S.B. Constructions (Engineers and Contractors) Nangloi, Delhi and was drawing salary of ₹ 6,500/-, albeit the claimants failed to prove the employment and earning of the deceased. The Tribunal assessed the monthly earning as ₹ 4,500/-, ¼ deduction for self-expenses was made and multiplier of 13 was applied considering the deceased to be in age group of 45 to 50. A total sum of ₹ 6,06,500/- was awarded along with interest at the rate of 7.5% per annum. The sum awarded included ₹ 50,000/- for medicine, treatment and transportation, ₹ 10,000/- for funeral expenses and ₹ 20,000/- for pain and suffering.

Heard learned counsel for the parties and perused the documents produced.

Learned counsel for the appellants argues that the deceased was ex-service-man and was 45 years old at the time of accident, he was getting pension of ₹ 4,500/- per month and it cannot be assumed that he was sitting idle at home though the claimants failed to prove his employment. The grievance raised is that the income assessed is on lower side. It is further argued that no future prospects have been awarded and the amount awarded under conventional heads are on lower side.

Learned counsel for the insurer argues that the deceased was a pensioner and the claimants failed to prove his any earning apart from the pension. It is submitted that the dependents would continue to get family pension. The grievance is that no amount can be awarded for pain and suffering in death case.

There is no challenge by the parties to ¼ deduction made for self-expenses and multiplier of 13 applied.

The deceased was considered in the age group of 45 to 50. He was Ex-Army personnel. He was receiving pension but the claimants were not able to produce any evidence worth reliance to prove that he was employed with S.B. Constructions (Engineers and Contractors). Considering the facts and having a clue from minimum wages prevalent at the relevant time, in order to award just and equitable compensation, the monthly income of the deceased is assessed as ₹ 5,500/-. The deceased was in the age group of 40 to 50 and was an Ex-Army personnel. As per the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 (SC) 5157*** , 30% future prospects are awarded. As per the decision of the Supreme Court in **Pranay Sethi's case (supra)**, the claimants are entitled to ₹ 15,000/- each for funeral expenses and loss of estate and ₹ 40,000/- is awarded for loss of consortium to the widow and no amount is awarded for pain and suffering.

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

Sr. No.	Particulars	Amount awarded (₹)
1.	Monthly awarded	5500/-
2.	30% Future prospects	1650/-
3.	¼ deduction for self-expenses	1787/-
4.	Applying multiplier of 13 (5363 x12x 13)	8,36,628/-
5.	Conventional heads	70,000/-
6.	Medical expenses already awarded by Tribunal	50,000/-
	Total	9,56,628/-

The award dated 3.1.2014 is modified to the extent that amount awarded of ₹ 6,06,500/- by the Tribunal is enhanced to ₹ 9,56,628/-

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

The appeal is allowed.

(AVNEESH JHINGAN)
JUDGE

06.05.2019
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Whether speaking/reasoned Yes
Whether Reportable: Yes