IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2602 of 2015
Date of decision: 16.1.2019

Smt.Raj Rani and others

.. Appellants

v.

Sunil Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Govind Rana, Advocate for
Mr. Harkesh Manuja, Advocate for the appellants.

Mr. Arun Gupta, Advocate for
Mr. Vikas Lochab, Advocate for respondents No. 1 and 2.

Mr. M. B. Jain, Advocate for respondent No. 3.

...

AVNEESH JHINGAN, J. (Oral)

The wife and two minor children of Surender (deceased) are in appeal against the award dated 9.12.2014 passed by the Motor Accident Claims Tribunal, Sonepat (for short, 'the Tribunal') seeking enhancement of compensation of ₹7,49,000/- awarded along with interest @ 7.5% per annum under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The respondents in the appeal are the driver of Swift Car bearing registration No. HR-41-7344 (hereinafter referred to as 'the offending vehicle), owner and the insurer (i.e. IFFCO TOKIO General India Insurance Company Ltd.) of the offending vehicle.

The facts as emanating from the record are that a motor vehicular accident took place on 27.5.2014. Surender (deceased) along with his brother was going on foot. On his way, he was hit by the rashly and negligently driven offending vehicle. As a result of the injuries sustained in the accident, he lost his life on his way to the hospital. FIR No. 149 dated 27.5.2014 was registered at Police Station, Murthal.

The claimants (appellants herein) before the Tribunal pleaded that the deceased was 46 years old at the time of accident. He owned one canter and used to drive the same. It was claimed that he was earning ₹40,000/- per month. The claimants produced his driving licence and Registration Certificate as evidence to the effect that the deceased owned a canter but failed to prove the monthly earning of the deceased. The Tribunal assessed the monthly earning as ₹6,000/- treating him to be a manual labourer, 1/3rd deduction for self-expenses was made and multiplier of '13' was applied. ₹1,00,000/- was awarded for loss of estate and consortium and ₹25,000/- was awarded for funeral expenses and transportation.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellants contends that monthly earning of the deceased assessed by the Tribunal is on the lower side as the Tribunal had not considered the fact that apart from being a driver, the deceased owned a canter which he used to drive. The grievance raised is that no future prospects have been awarded.

Learned counsel for the respondents argues that the claimants failed to substantiate the monthly earning of the deceased. The Tribunal relied upon the minimum wages for a manual labourer prevalent in the State of Haryana at the time of accident and rightly assessed the income as ₹6,000/- per month. It is further argued that the amounts awarded under the conventional heads should be made in consonance with the decision of the

Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157.**

There is no dispute between the parties that the deceased was a driver and used to drive his own canter. *Albeit,* the claimants failed to substantiate his monthly earning, no doubt, in such circumstances, one of the yardstick to be followed is to rely upon the minimum wages prevalent in the State at the time of accident to grant compensation. In the present case, what is to be taken into consideration is that the deceased was a semi-skilled labourer as he was trained driver. Moreover, he was owning a canter, which he was plying himself, and must be having some more income by having his own vehicle. Keeping in view that fact and considering the minimum wages prevalent in the State of Haryana at the time of accident, the monthly earning of the deceased is assessed as ₹10,000/-.

Having due regard to the decisions of the Supreme Court in **Pranay Sethi's case (supra)** and **Hem Raj v. Oriental Insurance Company Ltd., 2018 (2) PLR 480** and considering the age of the deceased as 46 years at the time of accident, 25% future prospects are awarded.

As the quantum of compensation is being re-visited, 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 to the widow.

It is pertinent to note that there is no dispute as to the deduction made for self-expenses and application of multiplier.

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

Particulars	***Amount awarded in ₹***
Monthly income	10,000/-
25% future prospects	2,500/-
Total income	12,500/-
1/3rd deduction for self expenses (12,500/3= 4,617)	8,333/-
Applying multiplier of '13'	12,99,948/-
Funeral expenses	15,000/-
Loss of estate	15,000/-
Loss of consortium to the widow	40,000/-
Total compensation awarded	13,69,948/-

The award dated 9.12.2014 is modified to the extent that the amount awarded by the Tribunal to the tune of ₹7,49,000/- is enhanced to ₹13,69,948/-. The appellants shall be entitled to the enhanced amount along with interest @ 7.5% per annum from the date of filing of the claim petition till realization of amount.

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

16.1.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No