

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 2021 of 2016

Date of Decision: 28.02.2019

Kaushalya and others

.....Appellants

Versus

Manoj Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ram Kumar Saini, Advocate
for the appellants.

Mr. Punit Jain, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.(oral)

The present appeal is against award dated 2.1.2016 passed by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal').

The appellants are widow, two minor children and mother of Suresh Kumar (deceased). Respondent No.1 is the driver of vehicle bearing registration No.HR-39-B-8870 (for short 'the offending vehicle') and respondents No. 2 & 3 are the owner and insurer (i.e. Cholamandalam MS General Insurance Company Limited) of the offending vehicle.

The facts are not disputed by the parties that a motor vehicular accident took place on 26.11.2014 which proved fatal for Suresh Kumar aged 36 years. The accident was caused due to rash and negligent driving of the offending vehicle. FIR No. 1076 dated 27.11.2014 was registered at Police Station Sadar, Hisar.

In the claim petition filed under Section 166 of the Motor

Vehicles Act, 1988 (for short 'the Act'), the Tribunal assessed the monthly earning of the deceased as ₹ 7500/- as the claimants had failed to prove the earning and occupation of the deceased, albeit, in the pleadings it was claimed that the deceased was having a tyre puncher shop. 1/4th deduction for self-expenses was made as the deceased was survived by 4 dependants and multiplier of 15 was applied. The Tribunal awarded a sum of ₹ 12,62,500/- along with interest at the rate of 7.5% per annum. The amount awarded included ₹ 1,00,000/- for loss of consortium and ₹ 1,00,000/- to claimants No. 2 to 4 for loss of love and affection and ₹ 25,000/- each for funeral expenses and litigation expenses. The owner, driver and insurer were held jointly and severally liable to pay the compensation.

Learned counsel for the appellants contends that no future prospects have been awarded. No other point has been raised.

Learned counsel for the insurer contends that the amount awarded under the conventional heads is on higher side and no amount is to be awarded under the head of loss of love and affection. But he could not raise any serious objection with regard to awarding of future prospects in view of the decisions of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157** and **Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480.**

No other point has arisen as the aforesaid award has not been challenged by the Insurance Company.

The contention raised deserves acceptance.

Having due regard to the decisions of the Supreme Court in **Pranay Sethi's case (supra)** and **Hem Raj's case (supra)**, 40% future prospects are awarded as the deceased was below the age of 40 years and falls in the category of having fixed wages or self-employed.

As the quantum of compensation is being revisited, it would be appropriate that the amount awarded under the conventional heads are awarded in consonance with the decision of the Supreme Court in **Pranay Sethi's case (supra)**. The claimants are entitled to ₹ 15,000/- each for loss of estate and for funeral expenses and ₹ 40,000/- for loss of consortium are awarded to the widow.

As the loss of dependency has not been challenged, 40% of ₹ 10,12,500/- is awarded for future prospects i.e. ₹ 4,05,000/-. The amount awarded of ₹ 2,25,000/- for loss of consortium, loss of love and affection and funeral expenses is restricted to ₹ 70,000/-, as discussed above.

The net effect is that the amount awarded by the Tribunal is enhanced by ₹ 2,50,000/-. The claimant shall be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing of the claim petition till realisation of the amount.

It is, however, clarified that the litigation expenses awarded by the Tribunal shall not carry interest.

Disposed of.

28.02.2019

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable:	No