215(1)

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

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1. FAO No.3408 of 2015 (O&M)
Date of Decision: 11.02.2019

Shriram General Insurance Company Ltd.
Appellant

Versus

Smt. Santosh Devi and others
Respondents

2. FAO No.3944 of 2015 (O&M)

Smt. Santosh and others
Appellants

Versus

Dharam Pal and others
Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Kumar, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant [in FAO No.3408 of 2015]
for respondent No.3 [in FAO No.3944 of 2015].

Mr. Jagram Singh Cooner, Advocate
for the appellants [in FAO No.3944 of 2015]
for respondents No.1 to 4 [in FAO No.3408 of 2015].

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AVNEESH JHINGAN, J (Oral):

The award dated 08.01.2015 passed by the Motor Accident Claims Tribunal, Patiala [for brevity 'the Tribunal'] has been assailed in two appeals. One appeal has been filed by the Insurer of Truck bearing registration No. HP-68A-2936 [hereinafter referred to as 'offending vehicle'] and another by the claimants i.e. widow, daughter and two minor children of Mahinder Pal Verma. The grievance raised in both the appeals is regarding quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

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

Brief facts of the case are that a motor vehicular accident took place on 06.10.2011. Mahinder Pal Verma alongwith Jagdish Singh and Gurpreet Singh parked car bearing registration No. HR-08C-8474 for changing the punctured wheel. In the meantime, Mahinder Pal Verma was sitting on the rear seat of the Car when it was hit by a rashly and negligently driven offending vehicle. He died at the spot. FIR No.256, dated 07.10.2011 was registered at Police Station Sadar Patiala.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that accident was caused due to the rash & 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 petition it was pleaded that deceased was 46 years old at the time of accident and was running a T.V. Repair shop, albeit the claimants failed to substantiate his occupation and monthly earning. The Tribunal assessed monthly earning of the deceased as ₹7,500/- per month treating him to be a labourer; 1/3rd deduction for self-expenses was made and multiplier of '13' was applied. The Tribunal awarded an amount of ₹10,05,000/- alongwith interest @ 6% per annum. The amount awarded including ₹1,00,000/- for loss of consortium; ₹1,00,000/- for loss of love & affection and ₹25,000/- for funeral expenses.

Heard learned counsel for the parties, perused the paper book and relevant documents produced.

Learned counsel for the insurer contends that inspite of considering the deceased as a Labourer, the Tribunal has assessed his monthly income as ₹7,500/- which is much more than minimum wages prevalent in the State at the time of accident. His grievance is that the amounts awarded under the conventional heads are on the higher side and no amount should have been awarded for loss of love & affection.

Learned counsel for the claimants argues that the deceased was running a T.V. repair shop and should be treated as a skilled labourer. He submits that no future prospects have been awarded; no amount has been awarded for loss of estate and the Tribunal has wrongly made 1/3rd deduction for self-expenses instead of 1/4th deduction. His grievance is that rate of interest awarded by the Tribunal is on the lower side.

There is no dispute with regard to age of the deceased and multiplier applied of '13'.

The Tribunal in absence of any proof regarding occupation and monthly earning of the deceased, treated deceased as a Labourer. The income assessed is on the higher side as the minimum wages at the time of accident were ₹4,016/-. In the present case, as per pleadings, the deceased was running a T.V. repair shop and the said pleading was not rebutted. He was survived by a widow and three children, who were in their teenage, considering the facts and circumstances of the case and having a clue from the minimum wages, monthly income of the deceased is assessed as ₹5,000/-.

Having due regard to 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***, 25% future prospects are awarded as the deceased was 46 years old at the time of accident and falls in the category of self-employed or a person having fixed income. The claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium. No amount is awarded for loss of love & affection.

Since the deceased was survived by 4 dependents, 1/4th deduction is to be made in consonance with the decisions of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

For the reasons recorded above, the compensation is being re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	5,000/-
25 % Future Prospects	1,250/-
Sub Total	6,250/-
1/4th deduction for self-expenses	1,563/-
Monthly Dependency	4,687/-
Annual Dependency	56,244/-
Applying multiplier of '13'	**7,31,172/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Grand Total	**8,01,172/-**

The award dated 08.01.2015 is modified to the extent that amount of ₹10,05,000/- awarded by the Tribunal is reduced to ₹8,01,172/-.

Considering the facts and banks' rate of interest prevalent at the time of accident, the rate of interest awarded by the Tribunal i.e. 6% is enhanced to 7.5% per annum. Claimants shall be entitled to interest from the date of filing the claim petition till the realization of the amount.

Vide order dated 14.05.2015, notice of motion was issued and payment of compensation beyond ₹7,00,000/- was stayed. The appellants are entitled to the balance amount alongwith interest @ 7.5% per annum.

Both the appeals are disposed of in aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

February 11, 2019
pankaj baweja

1. Whether speaking/ reasoned : **Yes**/ No
2. Whether reportable : **Yes**/ No