IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2855 of 2016
DECIDED ON: APRIL 01, 2019

ANJU PANDEY AND OTHERS

APPELLANTS

VERSUS

NARESH KUMAR AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vivek Suri, Advocate,
for the appellants.

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

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AVNEESH JHINGAN, J (ORAL):

The award dated 09.03.2016 passed by the Motor Accident Claims Tribunal, Panchkula (for brevity 'the Tribunal') has been assailed in appeal by legal representatives of Sudhir Pandey (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act'). The appellants are wife and two minor daughters of the deceased.

The driver, owner and insurer (i.e. Cholamandlam Insurance Co. Ltd.) of truck trolla bearing registration No. HR-39-C-0999 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents No. 1 to

3 respectively in the appeal and parents of the deceased have been arrayed as proforma respondents No.4 and 5.

The brief facts necessary for adjudication of the present appeal are that on 01.12.2014, Sudhir Pandey was riding a bi-cycle. He was accompanied by his wife, on the way, bicycle was hit by offending vehicle. As a result of the impact Sudhir Pandey suffered grievous injuries and died at the spot. FIR No.146, dated 01.12.2014 was registered at Police Station Sector 19, Panchkula.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

In the claim petition it was pleaded that the deceased was 36 years of age old and was working as Foreman with M/s United Fasteners, Plot No.345, Industrical Area, Phase-I, Chandigarh. Claimants failed to prove salary of deceased, the Tribunal asssessed the monthly earning of the deceased as ₹8000/-; 50% future prospects were awarded; ¼ deduction for self-expenses were made as the deceased was survived by four dependants and multiplier of '15' was applied. The Tribunal awarded a sum of ₹16,70,000/-. The claimants were held entitled to the afore-said amount alongwith interest @6% per annum in case the payment is made within two months from the date of award and in case of default would be entitled to interest @8% per annum. The amount awarded included ₹50,000/- under conventional heads.

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

Learned counsel for the appellants contends the Tribunal erred in considering the deceased as 36 years old, because as per High School certificates Ex.PW2/6 and Ex.P7 the date of birth of deceased was 09.12.1985. His grievance is that the amounts awarded under the conventional heads are on lower side. The challenge is to awarding of conditional interest.

Learned counsel for the insurer contends that the Tribunal erred in awarding 50% future prospects instead of 40%. He further submits that the claimants themselves pleaded in the claim petition that the deceased was 36 years old at the time of accident.

There is no challenge to High School certificates which were exhibitted before the Tribunal as Ex.PW2/6 and Ex.P7. As per the said certificates the date of birth of the deceased was 09.12.1985. The said evidence was neither doubted nor rebutted. The Tribunal erred in assessing the age of the deceased relying upon the pleadings and post-mortem report once the exact date of birth was on record. Multiplier should be applied by considering the age of the deceased as per his date of birth. The deceased was 29 years of age at the time of accident and multiplier of '17' is applied.

Having due regard to the decisions of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others;*** ***2017 (4) RCR (Civil) 1009*** and ***Hem Raj vs. Oriental Insurance Company*** **Ltd.** ***2018 (2)***

PLR 480; 40% future prospects are to be awarded, as the deceased was 40 years of age and fell in category of self-employed or having fixed wages.

As the quantum of compensation is being revisited, it would be appropriate that the amounts 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 funeral expenses and for loss of estate. A sum of ₹40,000/- is awarded for loss of consortium to the widow.

There is no dispute regarding income assessed by the Tribunal and deduction made for self-expenses.

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

	Head	**Compensation awarded**
(i)	Monthly income	₹ 8000/- per month
(ii)	Future prospects at 40%	₹ 3200/-
(iii)	Total Income	₹ 11,200/- per month
(iv)	Deduction of personal expenses	₹ 2800/- (i.e. 1/4th of total income)
(v)	Multiplier	17 (as per age of deceased)
(vi)	Loss of income	8400x12x17= ₹17,13,600/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of Consortium	₹40,000/-
	Total Compensation awarded	₹17,83,600/-

The award dated 09.03.2016 is modified to the extent that amount of ₹16,70,000/- awarded by the Tribunal is enhanced to ₹17,83,600/-. The Tribunal erred in awarding conditional interest.

The Supreme Court in ***National Insurance Co. Ltd. Vs. Keshav Bahadur and others (2004) 2 SCC 370***, held as under:-

> *"Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal."*

It was held that such a condition that in case of failure of payment within stipulated time, higher rate of interest with retrospective effect, cannot be sustained.

Considering the banks' rate of interest at the time of accident, the claimants shall be entitled to the entire amount (including enhanced amount) alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount

The appeal is allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

APRIL 01, 2019
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Whether speaking/reasoned	***Yes***
Whether reportable	***Yes***