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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.5674 of 2014
Date of Decision : 30.04.2019

Rajbala and others

Appellants

Versus

Satish and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J.S. Hooda, Advocate
` for the appellants.

Mr. Vishwajeet Singh, Advocate
for respondent No.1.

Mr. Deepak Chaudhary, Advocate for
Mr. Ram Avtar, Advocate
for respondent No.4.

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AVNEESH JHINGAN, J (Oral)

The award dated 13.02.2014 passed by the Motor Accident Claims Tribunal, Palwal [for brevity 'the Tribunal'] has been assailed by legal representatives of Randhir seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver, owners and insurer (i.e. The Oriental Insurance Company Ltd.) of Tractor make Mahindra-D1-275 Engine No.RCS-8584 and Chasis No. RS-8584 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 4 respectively in the appeal.

The grievances raised by the appellants in the present appeal are that no future prospects have been awarded and amounts awarded under the conventional heads are on the lower side. No other issue has been raised.

There is no dispute between the parties with regard to the factum of accident. A motor vehicular accident took place on 16.03.2010, the same proved fatal for Randhir, aged 43 years. The accident was result of rash and negligent driving of the offending vehicle. FIR No.113, dated 16.03.2010 was registered. 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 a farmer and milk vendor and was earning ₹15,000/- per month. The claimants failed to prove occupation and monthly earning of the deceased. His income was assessed as ₹5,000/- per month; 1/4th deduction for self-expenses was made as the deceased was survived by five dependents and multiplier of '14' was applied in consonance with the decision of the Supreme Court in ***<u>Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.</u>***

The Tribunal awarded ₹6,50,000/- alongwith interest @ 6% per annum if the payment is made within two months and in case of failure, alongwith interest @ 12% per annum. The amount awarded included ₹20,000/- for funeral expenses and for loss of estate.

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

Learned counsel for the appellants contends that no future prospects have been awarded; amounts awarded under the conventional heads are on the lower side and no amount has been awarded for loss of consortium.

Learned counsel for the respondents while defending the award resisted any further enhancement.

The deceased was in the age group of 40-50 years, he fell in the category of self-employed or a person having fixed wages, in consonance with the decision 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 there is no challenge to the loss of dependency i.e. ₹6,30,000/- calculated by the Tribunal, 25% of the said amount i.e. ₹1,57,500/- is awarded towards future prospects.

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 funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium.

The net result is that amount of ₹20,000/- awarded under the conventional heads is enhanced to ₹70,000/-.

The award dated 13.02.2014 is modified to the extent that amount of ₹6,50,000/- awarded by the Tribunal is enhanced by ₹2,07,500/-.

From perusal of the award, it is evident that the Tribunal awarded conditional interest. 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

The claimants shall be entitled to the 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 aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

April 30, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes