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

FAO-3673-2016(O&M)
Date of decision:-25.9.2019

Harish Chand and another

...Appellants

Versus

Vinod Kumar and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Yash Pal Khullar, Advocate
for the appellants.

Mr.Amrinder Singh Sidhu, Advocate
for respondent No.3.

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**H.S. MADAAN, J.**

On account of losing their son – Harkesh, aged about 18 ½ years, a student of $5^{th}$ semester of Engineering in MVN University at Palwal, in a motor vehicular accident, which took place on 16.10.2014 in the area of near Sugar Mill, Palwal, statedly on account of rash and negligent driving of car bearing registration No.HR-30L-7956 (hereinafter referred to as the offending car) by respondent No.1 – Vinod Kumar, parents of deceased, namely, his father Sh.Harish Chand, aged about 48 years and mother – Smt.Gayatri Devi, aged about 46 years, had brought a claim petition under Section 166 of Motor Vehicles Act against respondents i.e. Vinod Kumar- driver, Smt.Suman Devi – owner and ICICI Lombard General Insurance Company Ltd. - insurer of the offending car, claiming compensation to the tune of Rs.10 lakhs.

On notice, all the three respondents had appeared and offered a contest.

On conclusion of trial, Motor Accidents Claims Tribunal, Palwal (hereafter referred to as the Tribunal) allowed the claim petition partly vide award dated 2.11.2015 and awarded a compensation of Rs.4,40,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization to the claimants. The compensation amount was directed to be apportioned amongst the claimants as per details given in the award. Respondents No.1 to 3 were found to be liable to pay this amount jointly and severally.

Feeling aggrieved by the amount of compensation awarded, the petitioners/claimants have filed an appeal before this Court, notice of which was given to respondents. However, only respondent No.3 – insurance company put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on the basis of evidence available before it has come to the conclusion that the accident in question resulting in death of Harkesh, son of the claimants took place due to rash and negligent driving of the offending car by respondent No.1 – Vinod Kumar. This finding is based upon oral as well as documentary evidence adduced by the claimants, which has gone unrebutted, therefore no interference therewith is called for.

While calculating the quantum of compensation, the Tribunal has taken the age of deceased to be 18 years as mentioned in the postmortem report and age mentioned in the photocopy of matriculation certificate to be 8.10.1996. According to the claimants, the deceased was earning Rs.8,000/- per month by taking tuitions of lower class students besides helping in their agricultural work and maintaining them. According to the claimants, they have been deprived of love and affection of their son; the deceased had passed out 1st, 2nd, 3rd and 4th semester of his engineering diploma. 4th semester was passed by him in August, 2014 pointing out that he was a student of 5th semester at the time of accident. The Tribunal has taken notional income of the deceased to be Rs.15,000/- per annum. However, I find that the income so taken is on the lower side.

Learned counsel for the claimants has referred to judgment ***Kamlesh and others Versus Ram Dayal & others, The Punjab Law Reporter (2018-4)192*** wherein Co-ordinate Bench of this Court while dealing with grant of compensation in a claim petition under Section 166 of the Motor Vehicles Act, where the deceased was aged about 27 years and was pursuing a professional course, his monthly income was taken to be Rs.15,000/- observing that upon successful completion of the Chartered Accountancy Course, it can also be reasonably assumed that he would have either explored a wide range of employment avenues or would have engaged himself in private consultancy. In this case also, the deceased on completion of his engineering diploma could have got a good job either in public sector or in private sector earning a handsome salary, which was going to increase periodically. Therefore, in my view, it would be proper and appropriate to take the notional income of the deceased to be Rs.6,000/- per month, which would have enhanced with passage of time.

The Tribunal has omitted to add amount for future prospects to the monthly income of the deceased. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** keeping in view the age of deceased, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.6,000 + 2,400 = Rs.8,400/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** since the deceased was unmarried, deduction of 1/2 of the amount towards self expenses is to be made. Doing that the dependency of claimants comes out to Rs.4,200/- per month, annual dependency comes out to Rs.4,200 x 12 = Rs.50,400/-.

The Tribunal has used multiplier of 16, whereas in terms of ratio of authority ***Smt.Sarla Verma and others***(supra), keeping in view the age of deceased, multiplier of 18 should be applied. Doing that the compensation payable comes out to Rs.50,400 x 18 = 9,07,200/-.

The Tribunal has granted a sum of Rs.1,00,000/- as funeral expenses and Rs.1,00,000 towards non-pecuniary damages. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs. 9,07,200 + 30,000 = 9,37,200/-.

The Tribunal has awarded compensation of Rs.4,40,000/-.

In this way, the enhanced amount comes out to Rs.4,97,200/-

9,37,200 - 4,40,000). The claimants would be entitled to receive this amount with interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.4,97,200/- payable by respondents No.1 to 3 jointly and severally. The other terms and conditions given in the relief clause by the Tribunal shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly with costs.

25.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

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