213

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

****

**FAO No.4190 of 2016 (O&M) with
XOBJC No.85-CII of 2017
Date of Decision : 29.04.2019**

New India Assurance Company Ltd.

Appellant

Versus

Paramjit Kaur and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vinod Gupta, Advocate
for the appellant.

Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for respondents No.1 to 4 {Cross Objectors}.

Mr. Parmod Chauhan, Advocate
for respondent No.5.

****

AVNEESH JHINGAN, J (Oral)

The award dated 26.04.2016 passed by the Motor Accident Claims Tribunal, Kurukshetra [for brevity 'the Tribunal'] in MACP No.400 of 2015 has been assailed by the Insurer of Tavera Car bearing registration No. HR-65-2700 [hereinafter referred to as 'offending vehicle'] being aggrieved of quantum of compensation.

The claimants have filed the cross-objections in the appeal seeking enhancement of compensation.

The claimants before the Tribunal were widow and three children (including two minor children) of Karnail Singh. The driver-cum-owner and insurer of the offending vehicle were respondents before the Tribunal.

The factum of accident is not disputed by the parties. A motor vehicular accident took place on 17.10.2015. The said accident proved fatal for Karnail Singh. The accident was the result of rash and negligent driving of the offending vehicle. FIR No. 184, dated 18.10.2015 was registered at Police Station Babain. The driver-cum-owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

In the claim petition, it was pleaded that the deceased was an agriculturist and was 45 years old. His earning was claimed as ₹25,000/- per month. The claimants failed to prove occupation and monthly earning of the deceased. Relying upon the rates prescribed by the Deputy Commissioner, the Tribunal assessed monthly income of the deceased as ₹10,200/- treating him to be an unskilled labourer; 30% future prospects were awarded; 1/4th deduction for self-expenses was made and multiplier of '14' was applied. The Tribunal awarded ₹21,95,760/- alongwith interest @ 9% per annum. The amount awarded included ₹1,00,000/- for loss of consortium, ₹1,00,000/- for loss of estate, ₹3,00,000/- for loss of love and affection and ₹25,000/- towards transportation and funeral expenses.

Learned counsel for the insurer raises four issues:

- firstly, that income of the deceased assessed by the Tribunal is much more than the minimum wages prevalent in the State at the time of accident;
- secondly, that 30% future prospects have wrongly been awarded instead of 25% ;
- thirdly, that amounts awarded under the conventional heads are on the higher side; and
- lastly that amount awarded for loss of love and affection is not maintainable.

Learned counsel for the claimants/cross-objectors while defending the award argues that the deceased was a farmer and survived by three children. The Tribunal has rightly assessed his monthly income as ₹10,200/-.

The claimants failed to prove that the deceased was an agriculturist. There is no evidence that he was owing any land or was cultivating some land. The Tribunal relied upon the rates prescribed by the Deputy Commissioner instead of minimum wages. In case the claimants failed to prove occupation and earning of the deceased, one of the yardstick is to consider minimum wages prevalent in the State at the time of accident. In the present case, as per Aadhaar Card, deceased was 42 years old at the time of accident and was survived by widow, two minor children and a young daughter of 20 years. Having a clue from the minimum wages and taking into consideration the facts in entirety, in order to award just and equitable compensation, monthly income of the deceased is assessed as ₹6,300/-.

The deceased was in age group of 40-50 years and 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. 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. No amount is awarded for loss of love and affection.

There is no dispute with regard to 1/4th deduction made for self-expenses and multiplier of '14' applied.

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	6,300/-
25% Future Prospects	1,575/-
Sub Total	7,875/-
1/4th deduction for self expenses	1,969/-
Monthly Dependency	5,906/-
Annual Dependency	70,872/-
Applying multiplier of '14'	**9,92,208/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**40,000/-**
Grand Total	**10,62,208/-**

The award dated 26.04.2016 is modified to the extent that amount of ₹21,95,760/- awarded by the Tribunal is reduced to ₹10,62,208/-.

On 06.09.2016, while issuing notice of motion, execution of the award was stayed subject to appellant's depositing 50% of the amount awarded by the Tribunal.

The claimants shall be entitled to the balance amount alongwith interest as awarded by the Tribunal from the date of filing of the claim petition till realization of the amount.

The appeal is allowed and cross-objection is dismissed.

[AVNEESH JHINGAN]
JUDGE

April 29, 2019
pankaj baweja

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