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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.5268 of 2015
Date of Decision : 02.04.2019

Sunita and another

Appellants

Versus

Ajit and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. B. Prabha, Advocate for
Mr. Suneel Ranga, Advocate
for the appellants.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 13.02.2015 passed by the Motor Accident Claims Tribunal, Panipat [for brevity 'the Tribunal'] has been assailed by the parents of Deepak (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver, owner and insurer (i.e. Cholamandlam General Insurance Company Ltd.) of Truck bearing registration No. HR-67A-1682 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts regarding accident are not in dispute between the parties. A motor vehicular accident took place on 18.05.2013 and the same proved fatal for Deepak Kumar, aged 22 years who was driving the Canter bearing registration No. HR-67A-4139. The accident was caused due to the rash and negligent driving of the offending vehicle. FIR No.389, dated 18.05.2013 was registered at Police Station Sadar, Karnal.

In the claim proceedings, it was pleaded that the deceased was 22 years old at the time of accident and was earning ₹10,000/- per month. The claimants failed to prove monthly earning of the deceased. The Tribunal assessed monthly earning of the deceased as ₹8,000/- per month; ½ deduction for self-expenses was made and multiplier of '14' was applied relying upon the age of the claimants. The Tribunal awarded ₹6,82,000/- as compensation. The amount awarded included ₹10,000/- for funeral expenses. It was ordered that if the said amount is not paid within two months, the amount shall carry interest @ 9% per annum. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

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

The contentions raised by learned counsel for the appellants are :

- firstly, no future prospects have been awarded;

- secondly, multiplier of '14' has wrongly been applied considering the age of the claimants;
- thirdly, amounts awarded under the conventional heads are on the lower side;
- fourthly, no amount has been awarded for loss of estate; and
- lastly, the Tribunal erred in awarding conditional interest and in not awarding interest as per Section 171 of the Act.

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

The deceased was 22 years old at the time of accident and would fall in the category of self-employed or a person having fixed wages. In consonance with 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,*** 40% future prospects are awarded. The claimants shall also be entitled to ₹15,000/- each for funeral expenses and for loss of estate.

As per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** multiplier of '18' is applied. The issue regarding applying multiplier considering the age of the deceased and not the age of the claimant is no longer *res-integra.* The Supreme Court in the case of ***Sube Singh and***

another vs. Shyam Singh (Dead) and others; (2018) 3 SCC 18 has held as under:

> *"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."*
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> (*emphasis supplied)*

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

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	8,000/-
40 % Future Prospects	3,200/-
Sub Total	11,200/-
½ deduction for self expenses	5,600/-
Monthly Dependency	5,600/-
Annual Dependency	67,200/-
Applying multiplier of '18'	**12,09,600/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**12,39,600/-**

The award dated 13.02.2015 is modified to the extent that amount of ₹6,82,000/- awarded by the Tribunal is enhanced to ₹12,39,600/-.

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.*

The claimants shall be entitled to the entire 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 02, 2019
pankaj baweja

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