IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5292 of 2015 (O&M)
Date of Decision: 3.5.2019

Smt. Suman Lata and another

...Appellants

Versus

Hubban and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sagar Aggarwal, Advocate
for the appellants.

Mr. Rajbir Singh, Advocate,
for the respondent—Insurance Company.

JAISHREE THAKUR, J.

This appeal seeks to challenge the award dated 26.2.2015 passed by the Motor Accident Claims Tribunal, Mewat, wherein the appellants herein have been allowed compensation of a sum of ₹7,89,800/- on account of death of Ved Prakash.

Brief facts of the case are that on 25.06.2014 at about 3 p.m., Ved Prakash along with Nand Kishore was going from Grain Market Nuh to Bus-Stand, Nuh on foot. When they reached Adbar Chowk near Hodal Road, Nuh, Ved Prakash was walking ahead of Nand Kishore, then a truck bearing registration No. HR-74-A-2787, driven by respondent No.1, namely, Hubban, in a rash and negligent manner came from Tauru side and struck against Ved Prakash, after coming to the *kacha* portion of the road. As a result of the said impact, Ved Prakash sustained serious multiple injuries and ultimately succumbed to the injuries. It was alleged that the accident took place due to the sole rash and negligent driving of respondent No.1 and consequently an FIR came to be lodged with the and respondent No.1 was challenged under Sections 279, 304-A IPC. With these averments, claim petition was filed by the widow and the children of the deceased claiming they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was MBA from MDU, Rohtak and was doing private job in a company at Bhiwari and was earning ₹20,000/- per month.

The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable, no cause of action has accrued etc. Issues were framed and thereafter evidence was led by the parties.

After scrutiny of the evidence brought on record, the Tribunal held that the the accident was the result of rash and negligent driving of respondent No.1 and on assessment of the facts and evidence before it allowed compensation of ₹7,89,800/- which has been now challenged in the instant appeal.

Learned counsel for the appellants submits that the amount of compensation awarded by the Tribunal is on the lower side and as such the compensation amount awarded to the appellants deserves to be enhanced. It is submitted that the Tribunal while assessing the monthly income of the deceased, recorded the findings that "*...petitioner Suman Lata (PW1) in her cross-examination, has admitted that she has not brought any documentary proof regarding the age, income, education and profession of her deceased* *husband. Except her sworn testimony, the petitioner Smt. Suman Lata has not led any evidence on file that her husband was doing private job in a company at Bhiwari, from which he was earning Rs. 20,000/- per month. However, the fact remains that the accident has taken place on 25.6.2014 Labour Commissioner, Haryana vide Notification No. 8802-32 dated 28.2.2014 has fixed the minimum wages of even an unskilled labourer as 5547.10 say Rs. 5,550/- per month. Hence the notional income of deceased is taken as Rs. 66,600/- per month".* It is submitted that the above findings are apparently against the record. In fact, it stands proved on the record that the deceased was a well qualified person, who had done MBA from M.D. University, Rohtak. Result-cum-detailed marks card of Ist Semester, IInd Semester and IVth Semester have been produced on record as Ex. P-10, Ex.8 and Ex. P-6, respectively and the same have also been annexed with the instant appeal as Annexures A-1 to A-3 respectively. Therefore, it is submitted that the monthly income of the deceased is required to re-assessed in view of the evidence produced on record. It is also submitted that amount granted under the conventional head is also inadequate and thus pays for enhancement of compensation.

Per contra, learned appearing on behalf of respondent No.3—Insurance company submits that the amount of compensation awarded to the appellants is adequate and no interference is called for by this Court. However, he has not been able to deny the certificates with regard to the qualification of the deceased produced on the record as Ex. P-10, Ex.8 and Ex. P-6.

The Tribunal, after examining the evidence produced by the respective parties held that the deceased was 26 years of age and was earning ₹5,550/- per month. The Tribunal held that appellants No. 4, 5 and 6, being father and minor brothers of the deceased cannot be considered dependent upon the deceased and, therefore, deducted 1/3rd towards personal expenses of the deceased. In view of the certificates, Ex. P-10, Ex.8 and Ex. P-6, it stands proved that the deceased had done MBA from M.D. University, Rohtak. However, there is no evidence on record to substantiate the claim that he was earning ₹20,000/- per month. The only argument that has been addressed is that he was a qualified person and was capable of being earning ₹20,000/- per month as the deceased cannot be treated as labour since he is highly qualified. However, this Court is not inclined to accepts these arguments. It is a known fact that as on date, jobs are hard to get by. However, as the deceased cannot be treated as labourer since he is highly qualified, I will take the average income of the deceased at ₹10,000/- per month and will grant increase in income on account of future prospects at the rate of 40%. The other conventional heads are required to be reckoned, keeping in view the judgment of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009.** Therefore, compensation payable to the appellants are re-worked and tabulated as under:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Ved Parkash
(ii)	Date of accident	25.6.2014
(iii)	Age of the deceased	26 years
(iv)	Monthly income of the deceased	₹ 10,000/-

(v)	40% of (iv) is to be added towards future prospects	(₹ 10000+₹4000)= ₹ 14000/- per month
(vi)	1/3rd of (v) above deducted towards personal expenses	(₹ 14000-₹4667) = ₹ 9333/- per month
(vii)	Compensation calculated after applying the multiplier of 17	(₹9333X12X17) = ₹ 1903,932/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
Total		₹19,73,932

As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 19,73,932/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the instant appeal till the date of payment. The claimants will share the amount of compensation as per the award of the Tribunal.

3.5.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No