IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 101

Case No. : F. A. O. No. 7625 of 2014

Date of Decision : March 07, 2019

Nirmala Devi and others .... Appellants

vs.

Ayub and others .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Susheel Gautam, Advocate
for the appellants.

Mr. Satpal Dhamija, Advocate
for respondent no.3 – Insurance Company.

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DEEPAK SIBAL, J. (Oral) :

The instant appeal has been preferred by the appellants/ claimants seeking therein enhancement in the compensation awarded to them by the Motor Accident Claims Tribunal, Panipat (for short – the Tribunal).

The facts, in brief, which would be required to be noticed for adjudicating upon the present appeal are that on 28.07.2013, Badal Singh along with Chaman @ Chaman Lal and Parkash were going from Village Nara to Gohana on a tractor bearing registration no. HR-08-4752. The tractor was being driven by Badal Singh. When they reached near Village Shahpur, a truck bearing registration no. RJ-14-GE-9616 (for short – the offending vehicle) struck against the tractor resulting in the death of

Chaman and Parkash. In a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short – the Act), after concluding that the offending vehicle was being driven in a rash and negligent manner, the Tribunal went on to assess the payable compensation, the enhancement of which is sought through the present appeal.

Learned counsel for the appellants submits that the Tribunal erred in assessing the income of the deceased @ Rs.4,500/- per month because through the testimony of PW-5-Ram Mehar it had been proved before the Tribunal that the deceased was earning about Rs.10,000/- per month as Ram Mehar (PW-5) had deposed that for the last 5/6 years, the deceased had been taking 10 acres of his land on lease for cultivation purposes. Learned counsel for the appellants further submitted that as per the Matriculation Certificate of the deceased (Ex.P-11), at the time of his death, he was 34 years of age and therefore, as per the law laid down by the Hon'ble Apex Court in **Sarla Verma and others vs. Delhi Transport Corporation and another – (2009) 6 SCC 121**, the Tribunal erred in not applying a multiplier of 16 to the assessed income of the deceased. Relying on a decision of the Hon'ble Apex Court in **National Insurance Company Ltd. vs. Pranay Sethi and others – (2017) 16 SCC 680**, learned counsel for the appellants further submitted that the appellants were entitled to a sum of Rs.70,000/- under the conventional heads of loss of consortium, loss of estate and funeral expenses instead of Rs.60,000/-, as had been granted by the Tribunal, as also to future prospects @ 40% to the assessed income of the deceased.

Learned counsel for respondent no.3 – Insurance Company addressed arguments in support of the compensation assessed by the Tribunal.

Though Ram Mehar (PW-5) has stated before the Tribunal that for the last 5/6 years, the deceased used to take 10 acres of his land on lease for cultivation purposes, no documentary proof or revenue record was produced by the appellants to show that Ram Mehar owned 10 acres of land or with regard to grant of such land to the deceased for any of the 5/6 years for which Ram Mehar claimed to have given his land to the deceased for cultivation purposes. They also did not lead any evidence whatsoever to show that for the last 5/6 years, the deceased had ever sold any crop cultivated on the land claimed by Ram Mehar to have been leased out to the deceased.

In the light of the above, the findings returned by the Tribunal to disregard Ram Mehar's statement cannot be faulted with. However, assessment of income of the deceased @ Rs.4,500/- per month is found to be on the lower side as on the date of the accident, even the monthly minimum wages payable to an unskilled worker by the State of Haryana were Rs.5341.51. Accordingly, the income of the deceased is assessed at Rs.5,400/- per month.

As per the Matriculation Certificate of the deceased (Ex.P-11), at the time of his death he was 34 years of age. The Tribunal relied on the Voter Card of the deceased to hold that the deceased was aged 39 years. If the Matriculation Certificate and the Voter Card were both exhibited, then the Tribunal should have given preference to the date of birth of the deceased as mentioned in the Matriculation Certificate, especially when no evidence to the contrary was led by the respondents. Further, even as per the post-mortem report, the age of the deceased was 35 years. Thus, the finding of the Tribunal with regard to the age of the deceased is modified and it is held that at the time of his death, the deceased was 34 years of age. Accordingly, in view of **Sarla Verma's** case ***(supra)***, multiplier of 16 instead of 15 is ordered to be applied to the assessed income of the deceased.

Following the law laid down by the Hon'ble Apex Court in **Pranay Sethi's** case ***(supra)***, the appellants are also granted a cumulative sum of Rs.70,000/- under the conventional heads of loss of estate, loss of consortium and funeral expenses, as also held entitled to future prospects @ 40% to the income of the deceased as assessed earlier.

On the enhanced amount as above, the appellants are also held entitled to interest of 6.5% per annum from the date of filing of the claim petition till its realization.

The appeal is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

March 07, 2019
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Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*