IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 81 of 2014
DECIDED ON: FEBRUARY 14, 2019

SHAKUNTLA AND OTHERS .....APPELLANTS

VERSUS

NARESH KUMAR AND OTHERS .....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vijay Kumar Sheoran, Advocate
for the appellants.

Mr. Ajit Sihag, Advocate
for respondent No.1.

Ms. Vandana Malhotra, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN J. (ORAL)

The award dated 03.10.2013 passed by the Motor Accident Claims Tribunal, Bhiwani (for brevity 'the Tribunal') in MACT case No. 98 of 2012 has been assailed by the legal heirs of Dinesh seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The widow, two minor children and parents of Dinesh are the appellants. The driver of Tata Canter bearing registration No. HR-39-B-3076 (hereinafter referred to as 'offending vehicle), owner and insurer (i.e. United India Insurance Co. Ltd.) of the offending vehicle have been arrayed as respondents no. 1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that a motor vehicular accident took place on 04.09.2011. The vehicles involved in the accident were motorcycle bearing registration No. HR-16-H-5075 and the offending vehicle. The accident proved fatal for Dinesh aged 26 years. FIR No. 392, dated 05.09.2011 was registered at Police Station Bhiwani Sadar.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹7,02,280/- alongwith interest @ 7% per annum. The amount awarded included ₹25000/- under the conventional heads.

The Tribunal assessed the monthly earning of the deceased as ₹4426/- by relying upon the minimum wages for an unskilled labour prevalent in the State of Haryana at the time of accident; 1/4th deduction for self-expenses was made and multiplier of '17' was applied.

Heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellants contends that the Tribunal erred in assessing the monthly income of the deceased as ₹4426/- whereas the minimum wages for an unskilled labourer in the State at the time accident was ₹4644/-. His grievance is that no future prospects have been awarded and the amount awarded under the conventional heads are on the lower side.

Learned counsel for the respondents defend the award and resisted any further enhancement.

There is no dispute between the parties with regard to the age of the deceased; deduction made and the multiplier applied.

The tribunal rightly relied upon the minimum wages prevalent at the time of accident in the State of Haryana for an unskilled labourer but took a wrong figure, as minimum wages were ₹4644/-. The compensation is to be calculated by taking the monthly income of the deceased as ₹4644/-.

Having due regard to the decisions of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others;*** ***2017 (4) RCR (Civil) 1009*** and ***Hem Raj vs. Oriental Insurance Company*** Ltd ***2018 (2) PLR 480;*** 40% future prospects are awarded, as the deceased was 26 years old at the time of accident and is covered in the category of self employed or having fixed wages.

In consonance with the decision of the Supreme Court in ***Pranay Sethi's*** case (supra), claimants are also entitled to ₹15000/- each for funeral expenses and for loss of estate. The widow of the deceased is entitled to ₹40,000/- for loss of consortium.

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

	Head	**Compensation awarded**
(i)	Monthly income	₹ 4644/- per month
(ii)	Future prospects at 40%	₹ 1858/-
(iii)	Total Income	₹ 6502/- per month
(iv)	Deduction of personal expenses	₹ 1626/- (i.e. 1/4th of total income)
(v)	Multiplier	17 (as per age of deceased)
(vi)	Loss of income	4876x12x17= ₹9,94,704/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹10,64,704/-

The award dated 03.10.2013 is modified to the extent that amount of ₹7,02,280/- awarded by the Tribunal is enhanced to ₹10,64,704/-. The appellants shall be entitled to the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed.

(AVNEESH JHINGAN)
JUDGE

FEBRUARY 14, 2019
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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No