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

FAO-5518-2016 (O&M)
Date of decision : 20.12.2019

Vinod Kumar and others

... Appellants

Versus

Jalbinder and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Chand Ram Olla, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate and
Mr. Hitesh Chopra, Advocate
for respondent No.3.

ALKA SARIN, J.

1. The present appeal has been filed against the award dated 09.11.2015 passed by the Motor Accident Claims Tribunal, Fatehabad (hereafter referred to as 'the Tribunal').

2. The brief matrix of the facts relevant to the present case are stated as under:-

3. On 13.07.2014, Balwan Singh (deceased) along with his brother Dharam Raj was going to his fields from their Dhani on foot and was walking on the left side of the road. At about 01.30 A.M., when they reached near Dhani of Balwan son of Munshi Ram of Village Chobara, a truck bearing Registration No.HR-62A/2125, which is being driven by respondent No.1 in a rash and negligent manner, came from the opposite side and struck against Balwan Singh. The truck dragged Balwan Singh to

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some distance and eventually, he fell in the drain of water works. As a result of the accident, Balwan Singh sustained grievous injuries on his head and other parts of the body. Balwan Singh is stated to have died on the spot. On the basis of eye-witness account as narrated by Dharamraj, FIR bearing No.299 dated 13.07.2014 was registered under Sections 279 and 304-A of the Indian Penal Code against respondent No.1.

4. It was stated in the claim petition that Balwan Singh used to cultivate his own agricultural land measuring about one acre and also land measuring ten acres by taking the same on contract basis and further, he was worked as Helper/Assistant in a welding shop. It was claimed that from all sources, his monthly income was ₹25,000/-.

5. The claim petition was contested by the respondents on the usual grounds that the accident did not take place and that a false case had been set up. In addition, the Insurance Company/respondent No.3 took the plea that the driver of the offending vehicle was not holding a valid Driving Licence.

6. The Tribunal upheld the claim filed by the claimant-appellant, on the ground that he was 100% disabled person and was totally dependent upon the earnings, maintenance and care of his younger brother Balwan Singh-deceased and has awarded the following compensation:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	₹ 5,000/-
2	50% Deduction for personal expenses (being unmarried)	₹ 2,500/-
3	Annual Income	₹2,500 x 12 = ₹30000/-
4	Multiplier '16'	₹30,000x16 = ₹4,80,000/-
5	Funeral Expenses	₹20,000/-

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6	Total Compensation	₹5,00,000/-
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Plus interest @ 7.5% per annum from the date of filing of claim

petition till its realization. Out of the compensation awarded, 50% was to be paid to the claimant-appellant No.1 and 50% was to be paid to the proforma defendants-appellant Nos.2 and 3, herein.

7. I have heard learned counsel for the parties and with their able assistance, have gone through the record.

8. In order dated 15.05.2019, it was recorded that the counsel for the appellant Nos.2 and 3 had stated that they were not pressing the appeal nor seeking any share in the compensation awarded. An affidavit of appellant Nos.2 and 3 has also been filed, which is dated 30.11.2019, wherein the said statement is reiterated.

9. It has been submitted by learned counsel for the appellants that as per post-mortem report (Ex.P6), the age of the deceased is stated to be 30 years at the time of his death. Despite noticing that deceased was 30 years of age, the Tribunal has erred in applying a multiplier of 16. It has further been stated that future prospects have not been granted, which as per law laid down by the Apex Court in **National Insurance Company Ltd. vs. Pranay Sethi and others, (2017) 16 Supreme Court Cases 680**, ought to have been assessed to the tune of 40% and further, no amount has been awarded towards consortium and loss of estate.

10. *Per contra*, learned counsel for respondent No.3/Insurance Company has submitted that the amount of compensation has rightly been assessed by the Tribunal and there was no merit in the present appeal.

11. The claimant-appellant No.1 is the brother of the deceased-Balwan Singh. He has proved on record his disability certificate (Ex.P1),

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which shows that he is 100% disabled person. According to the averments, the claimant-appellant No.1 was totally dependent on his younger brother Balwan Singh for maintenance as well as care and therefore, has rightly been held to be entitled to the compensation by the Tribunal.

12. Though the Tribunal has assessed the compensation in terms of the law laid down by the Apex Court in Sarla Verma and others V/s Delhi Transport Corporation and another, 2009(6) Supreme Court Cases 121, however, has erred in applying wrong multiplier and also in not awarding future prospects. The deceased-Balwan Singh, as per post-mortem report (Ex.P-6), was aged 30 years and 1 month and hence, a multiplier of 17 has to be applied. Further, future prospects also ought to have been added to the tune of 40% as the deceased was a self-employed person and below the age of 40 years. I also find that the Tribunal has not awarded any amount towards loss of consortium and loss of estate and therefore, I hold that the appellant No.1 would also be entitled to an amount of ₹15,000/- towards loss of estate; ₹40,000/- towards loss of consortium and ₹15,000/- towards funeral expenses instead of ₹20,000/- as awarded by the Tribunal. Thus, the amount of compensation payable to the appellants would be as under:

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	₹5,000/-
2	Deduction 50%	₹2,500/-
3	Future Prospects 40%	₹1000/-
4	Total Monthly Income	₹2,500+1,000 = ₹3,500/-
5	Annual Income	₹3,500 x 12 = ₹42000/-
6	Multiplier '17'	₹42,000x17 = ₹7,14,000/-
7	Loss of Estate Loss of Consortium Funeral Expenses	₹15,000/- ₹40,000/- ₹15,000/-

8	Total Compensation	₹7,84,000/-
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13. The amount in excess over what has already been awarded by the Tribunal, shall also attract interest @ 7.5% from the date of filing of the appeal till the date of realization.

14. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified, accordingly.

20.12.2019
Yogesh Sharma

(ALKA SARIN)
JUDGE

Whether speaking/reasoned Yes/ No
Whether Reportable Yes/ No