IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5570 of 2016
DECIDED ON: MARCH 06, 2019

URMILA DEVI AND OTHERS

.....APPELLANTS

VERSUS

MANPREET AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Deepak Sharma, Advocate
for the appellants.

Mr. Bhavyadeep Walia, Advocate
for respondent No.1 and 2

Mr. Subham Jain, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN J. (ORAL)

The award dated 31.03.2016 passed by the Motor Accident Claims Tribunal, Ambala (for brevity 'the Tribunal') has been assailed by the legal heirs of Jai Bhagwan (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The widow, children and mother of Jai Bhagwan are the appellants. The driver, owner and insurer (i.e. New India Assurance Co. Ltd.) of Maruti Swift Dzire car bearing registration No. HR-75-A-0411 (hereinafter referred to as '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 on 12.10.2014, Jai Bhagwan was riding his motorcycle bearing registration No. HR-02-U-3059. He was being followed by his relatives Narender Singh and Phool Singh on separate motorcycle. On his way, he was struck by a rashly and negligently driven offending vehicle. As a result of the impact, Jai Bhagwan received multiple grievous injuries. He was taken to MM Hospital Mullana from where he was referred to PGI, Chandigarh but he was taken to Ivy Hospital, Mohali where he was operated upon. During the treatment he succumbed to the injuries on 21.10.2014.

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 Insurance company was held liable to pay the compensation at first instance but was given right to recover the amount from the driver and owner of the offending vehicle. The Tribunal awarded compensation of ₹17,66,395/- alongwith interest @ 7.5% per annum. The amount awarded included ₹5,000/- for loss of estate, ₹25,000/- for funeral expenses and ₹1,50,000/- for loss of love and affection, ₹1,00,000/- for loss of consortium and ₹2,48,895/- for medical expenses.

In the claim petition, it was pleaded that the deceased was doing business of manufacturing agricultural implements under the name and style of M/s Jai Agro and also having agricultural land and was earning ₹50,000/- per month. The Tribunal while relying upon the income tax return for the assessment year 2010-2011 assessed the monthly income of the deceased as ₹12,500/-, 1/4th deduction for self-expenses was made and multiplier of 11 was applied.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellants contends that no future prospects have been awarded and the Tribunal erred in applying the multiplier of '11' instead of '13'.

Learned counsel for the insurer contends that the amount under the conventional heads be awarded in consonance with the decision of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others;*** ***2017 (4) RCR (Civil) 1009.***

The contention raised by learned counsel for the appellants deserves acceptance.

The date of birth of the deceased was 05.03.1964, having due regard to the decisions of the Supreme Court in ***Parnay Sethi's*** case (supra) and ***Hem Raj vs. Oriental Insurance Company*** Ltd. ***2018 (2) PLR 480;*** 10% future prospects are awarded, as the deceased was 50 years old at the time of accident and falls in the category of self employed or having fixed wages.

The deceased was 50 years old at the time of accident and falls in the age group of 46-50 and not in the age group of 51-55, multiplier of '13' is to be applied instead of '11', in consonance with the decision of the Supreme Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***.

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded in consonance with the decision of the Supreme Court in ***Pranay Sethi's*** case (supra). The claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate. Further an amount of ₹40,000/- is awarded to the widow for loss of consortium.

In view of above discussion the compensation is recalculated as under:

	Head	**Compensation awarded**
(i)	Monthly income	₹ 12,500/- per month
(ii)	Future prospects at 10%	₹ 1250/-
(iii)	Total Income	₹ 13,750/- per month
(iv)	Deduction of personal expenses	₹ 3438/- (i.e. 1/4th of total income)
(v)	Multiplier	13 (as per age of deceased)
(vi)	Loss of income	10,312x12x13= ₹16,08,672/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹ 40,000/-
(x)	Medical expenses	₹ 2,48,895/-
	Total Compensation awarded	₹19,27,567/-

The award dated 31.03.2016 is modified to the extent that amount of ₹17,66,395/- awarded by the Tribunal is enhanced to ₹19,27,567/-. 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 in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

MARCH 06, 2019
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Whether speaking/reasoned: ***Yes***
Whether reportable : ***Yes***