225

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.6358 of 2016 (O&M)
Date of Decision : 10.04.2019

Babita Devi and others

Appellants

Versus

Ashwani Thakural and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Gunjan Gera, Advocate for
Mr. Arvind Rajotia, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate
for respondent No.2.

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AVNEESH JHINGAN, J (Oral)

The award dated 24.02.2015 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib [for brevity 'the Tribunal'] has been assailed by the widow and parents of Satish Dass (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver-cum-owner and insurer (i.e. United India Insurance Company Ltd.) of Fortuner Car bearing registration No. PB-23L-3000 {mentioned as PB-23B-3000 in M.O.P. of the appeal} [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 and 2 respectively in the appeal.

There is no dispute between the parties with regard to factum of accident. A motor vehicular accident took place on 29.04.2014 and the same proved fatal for Satish Dass. The accident was the result of rash and negligent driving of the offending vehicle.

In the claim proceedings, it was pleaded that the deceased was working as a Mason. Since the claimants failed to prove occupation and earning of the deceased, the Tribunal relying upon the minimum wages, assessed monthly income of the deceased as ₹5,000/-; deduction for self-expenses was made as per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21*** and multiplier of '17' was applied considering the deceased as 30 years old at the time of accident. The Tribunal awarded compensation of ₹8,90,000/- alongwith interest @ 7% per annum. The amount awarded included ₹1,00,000/- for loss of consortium and ₹25,000/- for funeral expenses. The driver-cum-owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

Learned counsel for the appellants contends that the deceased was below 40 years of age at the time of accident and no future prospects have been awarded by the Tribunal. *Per contra*, learned counsel for the insurer argues that amounts awarded under the conventional heads are on the higher side.

The two issues arising in the present appeal are that (i) no future prospects have been awarded; and (ii) amounts awarded under the conventional heads be made as per decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.***

The claimants failed to prove occupation and earning of the deceased. He fell in the category of self-employed or a person having fixed wages. In consonance with the decision of the Supreme Court in ***Pranay Sethi's case*** (supra), 40% future prospects are awarded as his age was below 40 years at the time of accident.

From perusal of the award, it is evident that there is some calculation error. The deceased was survived by three dependants and as such 1/3rd deduction for self-expenses was to be made. After deduction, figure comes to ₹3,333/- whereas it has been mentioned as ₹3,750/-.

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

It is pertinent to note that there is no dispute between the parties with regard to income assessed by the Tribunal.

In view of above discussion, compensation is re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	5,000/-
40% Future Prospects	2,000/-
Sub Total	7,000/-
1/3rd deduction for self expenses	2,333/-
Monthly Dependency	4,667/-
Annual Dependency	56,004/-
Applying multiplier of '17'	**9,52,068/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**40,000/-**
Grand Total	**10,22,068/-**

The award dated 24.02.2015 is modified to the extent that amount of ₹8,90,000/- awarded by the Tribunal is enhanced to ₹10,22,068/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

April 10, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : No