215

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

FAO No.6687 of 2016 (O&M)
Date of Decision: 26.02.2019

Geeta Devi and others

Appellants

Versus

Babu Lal and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sunil Saharan, Advocate
for the appellants.

Ms. Swati Batra, Advocate
for respondent No.3-Insurance Company.

****

AVNEESH JHINGAN, J (Oral):

The award dated 31.03.2015 passed by the Motor Accident Claims Tribunal, Hisar [for brevity 'the Tribunal'] has been assailed in appeal by the legal heirs of Anand, seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The appellants are widow, two minor children and father of the deceased. The driver, owner and insurer (i.e. Reliance General Insurance Co. Ltd.) of truck bearing registration No. HR-39B-7612 [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 07.02.2013, Anand alongwith his friend Dharambir was going from his village Arya Nagar to Hisar on motorcycle bearing registration No.HR-99HQ(T)-2745. On their way, the motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, both the riders of the motorcycle received grievous injuries. They were shifted to General Hospital, Hisar, where Anand was declared dead by the Doctor. FIR No. 157, dated 07.02.2013 was registered at Police Station Sadar, Hisar.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

In the claim petition, it was pleaded that the deceased was 35 years old and was running a wholesale medicine shop at Hisar. His earning was claimed as ₹40,000/- per month. The claimants failed to substantiate the occupation and monthly earning of the deceased. The Tribunal assessed the monthly income as ₹6,600/- per month; $1/4^{th}$ deduction for self-expenses was made and multiplier of '15' was applied by considering the deceased as 38 years old. The Tribunal awarded a sum of ₹11,16,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹25,000/- for funeral expenses and transportation and ₹1,00,000/-

each for loss of consortium and for loss of love & affection.

Learned counsel for the appellants contends that no amount has been awarded for future prospects.

Learned counsel for the insurer argues that amount awarded under the conventional heads are on the higher side and no amount should be awarded for loss of love and affection. She further challenged monthly income assessed by the Tribunal on the ground that minimum wages prevalent in the State at relevant time were ₹5,200/- per month.

As per the pleadings, the deceased was running a whole-sale medicine shop and his earning was claimed as ₹40,000/- per month, albeit, the claimants failed to prove the occupation and monthly earning of the deceased. In such circumstances, one of the yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. However, it is not the only factor to be considered to assess monthly earning. The deceased was survived by widow, two minor children and old father. In view of the pleadings made in the claim petition, which were not rebutted, it would not be appropriate to equate the deceased with an unskilled labourer. Nothing has been pointed out from record to show that monthly earning of the deceased is exorbitant. No interference is called for in the monthly income assessed by the Tribunal.

Having due regard to the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs. Oriental Insurance***

Company Ltd. 2018 (2) PLR 480, 40% future prospects are awarded as the deceased was below 40 years of age and fall under the category of self-employed or a person having fixed wages.

There is no dispute between the parties with regard to 1/4th deduction made for self-expenses and multiplier applied of '15'.

As the quantum of compensation is being revisited, it would be appropriate that 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 Rs.15,000/- each for funeral expenses and for loss of estate. Rs.40,000/- are awarded to the widow for loss of consortium. No amount is awarded for loss of love and affection.

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	6,600/-
40 % Future Prospects	2,640/-
Sub Total	9,240/-
1/4th deduction for self expenses	2,310/-
Monthly Dependency	6,930/-
Annual Dependency	83,160/-
Applying multiplier of '15'	**12,47,400/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**40,000/-**
Grand Total	**13,17,400/-**

The award dated 31.03.2015 is modified to the extent that amount of ₹11,60,000/- awarded by the Tribunal is enhanced to

₹13,17,400/-.

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

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

February 26, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes