225(I)

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

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1. **FAO No.7289 of 2016 (O&M)**
Date of Decision: 04.02.2019

Reliance General Insurance Company Ltd.

Appellant

Versus

Salma and others

Respondents

2. **FAO No.423 of 2017**

Salma and others

Appellant

Versus

Salman Khan and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjeev Kodan, Advocate
for the appellant [in FAO No.7289 of 2016]
for respondent No.3 [in FAO No.423 of 2017].

Mr. Ashish Gupta, Advocate
for the appellants [in FAO No.423 of 2017]
for respondents No.1 to 6 [in FAO No.7289 of 2016].

Mr. Shiva Khurmi, Advocate
for respondent No.7 [in FAO No.7289 of 2016]
for respondent No.1 [in FAO No.423 of 2017].

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AVNEESH JHINGAN, J (Oral):

The award dated 23.09.2016 passed by the Motor Accident Claims Tribunal, Gurgaon [for brevity 'the Tribunal'] has been assailed in two appeals. One appeal has been filed by the

Insurer of Motorcycle bearing registration No. HR-27E-7185 [hereinafter referred to as 'offending vehicle'] and another by the claimants i.e. widow, parents and 3 siblings of the deceased.

Since both the appeals arise from the same award and same accident and the grievances raised in the appeals are regarding quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] the same are being disposed of by a common order.

The driver, owner and insurer of offending vehicle were respondents No.1 to 3 before the Tribunal.

The facts in brief are that on 12.08.2015, Altaf Hussain @ Altaf met with a motor vehicular accident. The accident was caused due to the rash and negligent driving of the offending vehicle. The deceased was pillion rider on the offending vehicle which was being driven in a rash and negligent manner. The accident proved fatal. FIR No.304, dated 13.08.2015 was registered at Police Station Sector 55, Faridabad.

A claim petition was filed under Section 166 of the Act pleading that the deceased was 25 years old at the time of accident and was running a mobile shop. His monthly earning was pleaded to be ₹20,000/-. The claimants were able to prove his occupation but they failed to substantiate his monthly earning. The Tribunal assessed monthly earning of the deceased as ₹9,000/- per month; 50% future prospects were awarded; 1/4th deduction for self-expenses was made and multiplier of '18' was applied. The Tribunal awarded a sum of ₹23,20,000/- alongwith interest @ 9% per annum. The amount awarded including ₹33,000/- under the conventional heads and ₹1,00,000/- for loss of love & affection.

Learned counsel for the insurer contends that income of the deceased assessed by the Tribunal is on the higher side. He further contends that the Tribunal erred in awarding 50% future prospects instead of 40%. He argued that that 1/4th deduction for self-expenses has wrongly been made as the claimants were widow, parents and three siblings. His grievance is that no amount should have been awarded for loss of love & affection.

Learned counsel for the claimants argued that the deceased was running a shop of mobile repair and his earning was ₹20,000/- per month. He submits that no amount has been awarded for loss of estate and loss of consortium.

The claimants proved the occupation of the deceased by deposition of Bhagmal (PW-3) and Rasid (PW-2). A certificate of mobile repairing course was placed as Mark 'C'. There was no proof with regard to monthly earning of the deceased. In cases where the claimants failed to prove monthly earning of the deceased, one of the yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. Considering the fact that he was running a mobile repair shop and was having a Certificate in the course of mobile repair, it would be appropriate to treat him as a skilled labourer. Having clue from the minimum wages, his monthly income is assessed as ₹6,000/-.

Having due regard to the decisions of the Supreme Court in cases of ***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.

The deceased is survived by widow, parents and 3 brothers & sisters. The age of the father is 50 years. There is nothing on record to show that father was dependent on the earning of the deceased. In such circumstances, as per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***, 1/3rd deduction is made considering the number of dependents between 2 to 3. Further, multiplier applied by the Tribunal is already in consonance with the decision of the Supreme Court in ***Sarla Verma's*** case (supra).

In view of 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. ₹40,000/- are awarded to widow for loss of consortium. No amount is awarded for loss of love & affection.

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

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	6,000/-
40 % Future Prospects	2,400/-
Sub Total	8,400/-
1/3rd deduction for self expenses	(-) 2,800/-
Monthly Dependency	5,600/-
Annual Dependency	67,200/-
Applying multiplier of '18'	**12,09,600/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Grand Total	**12,79,600/-**

The award dated 23.09.2016 is modified to the extent that amount of ₹23,20,000/- awarded by the Tribunal is reduced to ₹12,79,600/-.

Vide order dated 07.05.2018, execution of award was stayed. The claimants shall be entitled to the amount alongwith interest as awarded by the Tribunal, from the date of filing the claim petition till the realization of the amount.

Both the appeals are disposed of in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

February 04, 2019
pankaj baweja

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