IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3115 of 2017 (O&M)
Date of decision: 30.5.2019

Mithlesh and others
...Appellants

Versus

Sanjay Kumar and others
...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Parmod Parmar, Advocate,
for the appellants.

Mr. Punit Jain, Advocate,
for respondent No.3—Insurance Company.

JAISHREE THAKUR, J.

This appeal seeks to challenge the award dated 23.11.2016 passed by the Motor Accident Claims Tribunal, Jhajjar, wherein the appellants herein have been allowed compensation of ₹9,57,000/- on account of death of Rajender.

In brief, the facts are that on 26.8.2015 deceased Rajender and his brother went to the house of the in-laws of the deceased and while they were on their way from Kulana and were crossing village Koka, they were hit by a Bolero Jeep bearing registration No. HR-14J-0454, driven by respondent No.1 in rash and negligent manner, as a result of which, Rajender fell on the road and received deep head injuries and ultimately succumbed to the injuries on the way to hospital. It was alleged that the accident took place due to the rash and negligent driving of respondent No.1

and consequently FIR 870 dated 27.8.2015 came to be lodged with the Police Station Jhajjar. With these averments, claim petition was filed by the mother, widow and the children of the deceased claiming they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was earning ₹15,000/- per month from running a milk dairy.

The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable, no cause of action has accrued etc. Issues were framed and thereafter evidence was led by the parties in support of their respective stands.

After scrutiny of the evidence brought on record, the Tribunal held that the the accident was the result of rash and negligent driving of respondent No.1 and on assessment of the facts and evidence before it allowed compensation of ₹9,57,000/- which has been now challenged in the instant appeal.

Learned counsel for the appellants submits that the amount of compensation awarded by the Tribunal is on the lower side and as such the compensation amount awarded to the appellants deserves to be enhanced. It is submitted that the Tribunal has not awarded any amount on account of future prospects of earning. It is further submitted that the Tribunal has wrongly taken the monthly income of of the deceased as ₹7000/-, whereas the deceased was earning ₹15,000/- per month while running a milk dairy.

Per contra, learned counsel appearing on behalf of respondent No.3—Insurance company submits that adequate amount of compensation has been awarded by the Tribunal and no interference is called form in the instant appeal.

The Tribunal, after examining the evidence produced by the respective parties held that the deceased was 45 years of age and was earning ₹7,000/- per month. The Tribunal further deducted 1/4th towards personal and living expenses of the deceased. In the absence of the documentary evidence with regard to the actual income of the deceased, the Tribunal observed as under:-

> "A*lthough, the respondents have not produced any evidence to rebut the evidence produced by the petitioner regarding the income of the deceased Rajender yet merely on the statements of the petitioner PW1 Mithlesh and PW3 Khushi Ram, it cannot be presumed that the deceased Rajender was earning Rs. 15,000/- per month by selling milk. The entries of the register for sale of milk are not sufficient to corroborate the statements of the petitioner and Khushi Ram as the same have not been verified or attested by any witness or even proved to be kept in due course of business. However, keeping in view the fact that the deceased Rajender is claimed to be working as an agriculturist and running a milk diary to supplement his income, he cannot be held to be earning less than Rs. 7000/- per month even as a skilled worker..."*

Therefore, the Tribunal keeping in view the nature of the evidence brought on record has rightly come to the conclusion that the deceased ought to have been earning ₹7,000/-, and while applying the multiplier of 14 rightly awarded the amount of compensation, as mentioned above. However, increase in income on account of future prospects at the rate of 25% and other conventional heads are required to be reckoned, keeping in view the judgment of the Supreme Court in **National Insurance Company Limited**

Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009. Therefore, compensation payable to the appellants are re-worked and tabulated as under:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Rajender
(ii)	Date of accident	26.8.2015
(iii)	Age of the deceased	45 years
(iv)	Monthly income of the deceased	₹ 7,000/-
(v)	25% of (iv) is to be added towards future prospects	(₹ 7000+₹1750= ₹ 8750/- per month
(vi)	1/4th of (v) above deducted towards personal expenses	(₹ 8750-₹2187) = ₹ 6563/- per month
(vii)	Compensation calculated after applying the multiplier of 14	(₹6563X12X14) = ₹ 11,02,584/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
Total		₹11,72,584

As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 11,72,584/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the instant appeal till the date of payment. The claimants will share the amount of compensation as per the award of the Tribunal.

30.5.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No