214

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision : 08.02.2019

1. FAO-3591-2017

New India Assurance Company Limited ...Appellant

vs.

Usha and others ...Respondents

2. FAO-5040-2018 (O&M)

Usha and others ...Appellants

vs.

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Kumar, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant in FAO-3591-2017
for respondent No. 3 in FAO-5040-2018.

Ms. Nidhi Garg, Advocate
for respondents No. 1 to 6 in FAO-3591-2017
for appellants in FAO-5040-2018.

****

Avneesh Jhingan, J. *(Oral)*

This common order shall dispose of above mentioned two appeals which arise out of the same accident and same award.

The award dated 02.01.2017 passed by the Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal') has been assailed by the Insurer of bus bearing registration No. HR-63C-7103 seeking reduction of compensation awarded and also by the legal heirs of Karam Singh seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The facts emanating from the record are that on 13.02.2016, Karam Singh along with Shiv Raman was going on a motorcycle which was hit by a rashly and negligently driven offending vehicle. As a result of the impact both the riders of the motorcycle sustained injuries and were admitted in General Hospital, Karnal where they succumbed to injuries.

A claim petition was filed by the widow, three minor children and parents of deceased Karam Singh. It was pleaded that he was a plumber and earning ₹ 40,000/- per month. PW-5, namely Balwinder Singh, filed an affidavit deposing that he was a contractor and the deceased was working under him and earning ₹ 20,000/- to 22,000/- per month. However, no documentary evidence was produced by him. The Tribunal opined that evidence was not worth reliance and assessed monthly income as ₹ 9560/- per month by relying upon the rates fixed by the Deputy Commissioner. 50% future prospects were awarded, 1/4th deduction was made for self-expenses and multiplier of '15' was applied considering the deceased to be 38 years old and the Tribunal awarded a sum of ₹ 24,11,000/- along with interest @ 9% per annum. The amount awarded included ₹4,25,000/- for loss of love and affection and ₹ 25,000/- for funeral expenses.

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 the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

Heard learned counsel for the parties and perused the paper book and the relevant documents produced by them.

Learned counsel for the Insurance Company contends that the Tribunal erred in assessing the monthly income of the deceased as ₹ 9,560/- which is more than the minimum wages prevalent in the State at the time of accident. The grievance raised is that no amount is to be awarded for loss of love and affection. He further contends that 50% future prospects have wrongly been awarded instead of 40%.

Learned counsel for the claimants while defending the award argued that the deceased was a Plumber and cannot be treated as an unskilled labourer.

No serious dispute has been raised to the fact that the deceased was working as a Plumber. The claimants failed to substantiate the monthly earning of the deceased. In cases where the monthly income of the deceased is not proved, the reliance is to be placed upon the minimum wages prevalent in the State at the time of accident. But, there cannot be a straight jacketed formula that in every case and in all circumstances, income is to be assessed by relying upon the minimum wages. It is only a yardstick to be relied upon. The deceased was working as a Plumber, in such circumstances, it would not be appropriate to consider him as an unskilled labourer. At the time of accident, minimum wages in the State of Haryana for a skilled labourer were ₹ 8002/- per month which are rounded of to ₹ 8,100/- per month for calculation purpose.

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,*** and the fact that the deceased was below 40 years of age and would come in the category of self-employed or having fixed wages, 40% future prospects are to be awarded.

As per the 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. ₹ 40,000/- are awarded to the widow on account of loss of consortium. No amount is awarded for loss of love and affection.

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

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased as assessed	8,100/-
40 % Future Prospects	3,240/-
Sub Total	**11,340/-**
1/4th deduction for self expenses	2,835/-
Applying multiplier of '15'	15,30,900/-
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium	**40,000/-**
Grand Total	**16,00,900/-**

The award dated 02.01.2017 is modified to the extent that the amount of ₹ 24,11,000/- awarded by the Tribunal is reduced to

₹16,00,900/-.

While issuing notice of motion vide order dated 22.05.2017, the recovery of amount of compensation beyond ₹ 13.50 lakhs was stayed, the claimants shall be entitled to the remaining amount alongwith interest at the rate as awarded by the Tribunal from the date of filing of the claim petition till the realization of the amount.

Both the appeals are disposed of accordingly.

8th February, 2019 **(AVNEESH JHINGAN)**
shabha **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*