IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1052 of 2018
Date of decision: 14.5.2019

Janki and others **.. Appellants**

v.

Saravmittar and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Jaideep Kaur, Advocate for the appellants.

Mr. Punit Jain,Advocate for respondent No. 3.

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AVNEESH JHINGAN, J. (Oral)

The award dated 17.5.2017 passed by the Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal') has been assailed by the legal representatives of Mahender seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The respondents in the appeal are the driver of tractor bearing registration No. 44G-6836 (hereinafter described as 'the offending vehicle'), owner and the insurer (i.e. L&T Insurance Company Limited) of the offending vehicle.

The facts necessary for adjudication of the present appeal are that on 5.12.2014, Mahender alongwith Raju was going to village Bani on motorcycle bearing registration No. HR-26-R-9945. When they reached in front of Bharat Gas Agency at Bani Road, the offending vehicle struck the motorcycle. As a result of the impact, Mahender suffered serious injuries, he died during treatment. FIR No.437 dated 7.12.2014 was registeed at Police Station Rania.

In the claim petition, it was pleaded that the deceased was working as labourer and was earning 20,000/- per month. Adhar card of the deceased was produced before the Tribunal, wherein the date of birth was mentioned as 1.1.1973. He was 42 years old at the time of accident. The claimants failed to prove the earning of the deceased but the widow in her cross-examination admitted that they are yellow card holders and she had applied before Sub Divisional Magistrate, Ellenabad for ₹1,00,000/- on account of death of her husband. The Tribunal assessed the monthly earning as ₹4,000/-, 30% future prospects were awarded, 1/4th deduction for self-expenses was made as the deceased was survived by five dependents and multiplier of 14 was applied. The Tribunal awarded a sum of ₹8,80,200/- along with interest @ 9% per annum. The amount awarded included ₹1,00,000/- for loss of consortium, ₹1,00,000/- for loss of love and affection and ₹25,000/- for funeral expenses.

The Tribunal considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The insurer was held liable to pay compensation.

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

Learned counsel for the appellants argues that the income assessed by the Tribunal is on the lower side.

Learned counsel for the insurer contends that the claimants failed to prove the monthly earning of the deceased and PW-2 widow of the deceased had admitted that they were yellow card holders. He defends the income assessed by the Tribunal. He further submits that 30% future prospects have wrongly been awarded instead of 25% and the amount awarded under the conventional heads are on the higher side.

The contention raised by learned counsel for the appellants is not well founded. There is an admission of the widow that they were yellow card holders. As per the policy of the State of Haryana, yellow cards are issued to the families whose annual income was upto ₹22,000/-. at the relevant time.

The Tribunal assessed the monthly earning of the deceased considering the entire facts in toto.

There is another aspect of the matter. The decease was in the age group of 40 to 50 years and fell in the category of self-employed or having fixed wages. Having due regard to the decisions of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157** and **Hem Raj v. Oriental Insurance Company Ltd., 2018(2) PLR 480,** 25% future prospects are to be awarded. As a result, 5% extra future prospects have already been awarded by the Tribunal. ₹1,00,000/- each for loss of consortium and love and affection and ₹25,000/- for funeral expenses have been awarded by the Tribunal. As per the decision of the Supreme Court in **Pranay Sethi's case (supra)**, the claimants are entitled to ₹70,000/- under the conventional heads. The result is that ₹1,55,000/- more has been awarded by the Tribunal under the conventional heads. The Supreme Court in **D.M., Oriental Insurance Co. Ltd. v. Swapna Nayak, AIR 2017 SC 692** has held that if the amount awarded under one head compensates for a lesser amount awarded under the other head, there is no scope for interference. The relevant para of the said judgment is reproduced below:

"18. When we find that under one head, reasonable amount has been awarded and under another head, nothing has been awarded though it should have been awarded and at the same time, we notice that eventual figure of the award of compensation payable to the claimants appears to be just and reasonable then in such eventuality, we do not consider it proper to interfere in such award in our appellate jurisdiction under Article 136 of the Constitution. In other words, if by applying the tests and guidelines, we find that overall award of compensation is just and fair, then, in our view, such award deserves to be upheld in claimants' favour. We find it to be so in the facts of this case having taken note of all relevant facts and circumstances of the case."

There is no scope for enhancement. The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

14.5.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No