IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 07.05.2019

(i) FAO No. 3919 of 2017 (O&M)

New India Assurance Company Limited

.......Appellant

Versus

Parveen Bibi and others

......Respondents

(ii) FAO No. 4494 of 2017 (O&M)

Parveen Bibi and others

.......Appellants

Versus

Tarsem Lal and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Mandeep Singh, Advocate for
Mr. Jagpal Singh, Advocate
for claimants.

Mr. Ashwani Talwar, Advocate and
Mr. Lalit Kumar, Advocate
for insurance company.

AVNEESH JHINGAN, J.(oral)

The award dated 6.2.2017 passed by the Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as 'the Tribunal') has been assailed by the insurer of Trallor bearing registration No.PB-03AJ-9066 (for short 'the offending vehicle') and by the legal representatives of Sadiq Mohd. by filing two separate cross-appeals.

The issue in both the appeals is with regard to quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), hence, both are being disposed of by a common order.

The factum of accident has not been disputed by the parties. A motor vehicular accident took place on 17.11.2015. The accident proved fatal for Sadiq Mohd. aged 30 years. The accident was result of 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 compensation.

In the claim petition, it was pleaded that the deceased was working as a carpenter also doing agricultural work and running a dairy. His income was claimed to be ₹ 35,000/- per month. The claimants failed to prove the occupation and earning of the deceased. The Tribunal assessed the monthly earning of the deceased as ₹ 7500/-; 50% future prospects were awarded; 1/3rd deduction for self-expenses were made and multiplier of 17 was applied. The Tribunal awarded a sum of ₹ 17,55,000/- along with interest at the rate of 7.5% per annum. The amount awarded included ₹ 25,000/- for funeral expenses, ₹ 1,00,000/- for loss of love and affection and ₹ 1,00,000/- for loss of consortium.

Learned counsel for the insurer argues that the claimants failed to prove the occupation and monthly earning of the deceased and the income assessed by the Tribunal is on higher side. He further argues that the Tribunal erred in awarding 50% future prospects instead of 40%. His submission is that the amount under the conventional heads be awarded as per the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.***

Learned counsel for the claimants contends that the deceased was 30 years of age and was a carpenter, he was survived by a young widow, minor child and an old mother. The income assessed is on lower side.

There is no dispute between the parties with regard to multiplier of 17 applied and 1/3rd deduction made for self-expenses as the same are in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

In the claim petition it was pleaded that the deceased was working as a carpenter. Though the claimants had to prove the monthly earning and occupation of the deceased. In cases where the claimants failed to prove the monthly earning of the deceased, one of the yardstick to be considered is the minimum wages prevalent at the relevant time. The minimum wages are not to be rigidly applied by the Courts, the Courts have to consider other aspects like the dependants survived by, age of the deceased, etc.

In the present case, it was pleaded that the deceased was working as a carpenter albeit the claimants failed to prove the occupation, in order to award just and equitable compensation, the income of the deceased is assessed as ₹ 8000/- per month.

The deceased was below 40 years and fell in the category of self-employed or having fixed wages, as per the decision of the Supreme Court in ***Pranay Sethi's case (supra)*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480*** 40% future prospects are awarded.

As per the decision of the Supreme Court in **Pranay Sethi's case (supra),** ₹ 15,000/- each is awarded to the claimants for funeral expenses and for loss of estate and ₹ 40,000/- is awarded to the widow for loss of consortium.

The compensation is calculated as under:

Sr. No.	Particulars	Amount awarded (₹)
1.	Income	8000/-
2.	40% future prospects	11,200/-
3.	$1/3^{rd}$ deduction for self-expenses	3733/-
4.	Applying multiplier of 17 (7467 x 12 x17)	15,23,268/-
5.	Conventional heads	70,000/-
6.	Total	15,93,268/-

The award dated 6.2.2017 is modified to the extent that amount awarded of ₹ 17,55,000/- by the Tribunal is reduced to ₹ 15,93,268/-.

Vide order dated 2.6.2017, recovery of amount of compensation beyond ₹11,25,000/- was stayed. The claimants shall be entitled to balance amount alongwith interest as awarded by the Tribunal.

Both the appeals are disposed of in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

07.05.2019
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Whether speaking/reasoned Yes
Whether Reportable: Yes