IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1511 of 2018
Date of decision: 1.5.2019

Geeta Devi and others

.. Appellants

v.

Jiwan Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajesh Goyal, Advocate for the appellants.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 6.4.2016 passed by the Motor Accident Claims Tribunal, Panipat (for short, 'the Tribunal') has been assailed by the legal representatives of Virender 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 Tralla bearing registration No. HR-38L-5739 (hereinafter referred to as 'the offending vehicle'), owner and insurer (i.e. Bharti Axa Gen. Insurance Company Limited) of the offending vehicle.

The facts necessary for adjudication of the present appeal are that on 4.11.2013, Virender was sitting inside the booth installed on a petrol pump, in the meantime, the offending vehicle turned towards the petrol pump, the driver lost control and hit the booth. The offending vehicle ran over the right leg of Virender. He was taken to Community Health

Centre, Samalkha from where he was referred to Trauma Centre Hospital, Delhi. He died during the treatment. FIR No. 583 dated 5.11.2013 was registered at Police Station, Samalkha.

In the claim petition, it was pleaded that the deceased was working as a helper at petrol pump and his earning was claimed as ₹9,000/- per month. The claimants failed to prove the earning of the deceased. The Tribunal relying upon the minimum wages assessed the monthly earning as ₹5,342/-. No evidence was produced with regard to the age of the deceased. The Tribunal relying upon the post mortem report held that the deceased was 40 years old at the time of accident, 30% future prospects were awarded, 1/3rd deduction for self-expenses was made and multiplier of 15 was applied in consonance with the decision of the Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 21**. The Tribunal awarded a sum of ₹10,58,400/- along with interest @ 7.5% per annum. The amount awarded included ₹1,00,000/- each for loss of consortium and for loss of love and affection. ₹25,000/- was awarded towards funeral expenses.

The Tribunal 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 insurer was held liable to pay the compensation.

Heard learned counsel for the appellants and perused the relevant documents produced by him.

Learned counsel for the appellants argues that the Tribunal erred in awarding 30% future prospects instead of 40% and the income assessed is on the lower side.

The contention raised by learned counsel for the appellants is not well founded. There is no challenge to the finding recorded by the Tribunal that the deceased was 40 years of age at the time of accident. Evidence was neither produced before the Tribunal nor before this Court to show that the deceased was below 40 years at the time of acident. The Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157** has held as under:

> "61. In view of the aforesaid analysis, we proceed to record our conclusions:-
>
> (i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
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> (ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.
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> (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was 48 between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary

> should be read as actual salary less tax.
>
> (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
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> ** ** **”

The Supreme Court held that when the deceased is aged 40-50 years, 25% future prospects are to be awarded if he is self-employed or on fixed salary.

As per the decisions of the Supreme Court in **Pranay Sethi's case (supra)** and **Hem Raj v. Oriental Insurance Company Ltd., 2018(2) PLR 480,** as the deceased was in the age group of 40 to 50 years and fell in the category of self employed or having fixed wages, 25% future prospects should have been awarded. The Tribunal has already awarded 30% future prospects. The claimants failed to prove the monthly earning of the deceased, in such circumstances, one of the safest yardstick is to rely upon the minimum wages prevalent at the relevant time. There is no dispute that the income assessed by the Tribunal is as per the minimum wages prevalent at the relevant time for an un-skilled labourer. In any case, since 5% of the amount has already been awarded in excess for future prospects, no interference is called for with the income assessed by the Tribunal.

There is another aspect of the matter. As per the decision of the Supreme Court in **Pranay Sethi's case (supra)**, the claimants are entitled to ₹70,000/- under conventional heads i.e. ₹40,000/- for loss of consortium and ₹15,000/- each for funeral expenses and for loss of estate and no amount is to be awarded for loss of love and affection, whereas in the present case a sum of ₹2,25,000/- has already been awarded under the conventional heads and for loss of love and affection. The amount awarded by the Tribunal is just and equitable when considered in entirety.

The Supreme Court in **D. M., Oriental Insurance Co. Ltd. v. Swapna Nayak, AIR 2017 SC 692** has held that where compensation under one head is just and nothing has been awarded in another and eventual figure appears just and proper, it would not be proper to interfere in such award. The relevant para is reproduced below:

> "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 so 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 and 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."

No interference is called for in the impugned award.

The appeal is dismissed.

Since the appeal has been decided on merits, the question of limitation is left open.

(AVNEESH JHINGAN)
JUDGE

1.5.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No