IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4193 of 2017 (O&M)
Date of decision : 4.12.2019

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Resham Kaur and others
................Appellants

vs.

Sukhwinder Singh and others
................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Ms. Kamlesh, Advocate for
Mr. Parminder Singh, Advocate for the appellants.

Mr. Sanjiv Kodan, Advocate for respondent No.3
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H. S. Madaan, J. (Oral)

One Prem Chand @ Bunti, had unfortunately died in a motor vehicular accident, which took place on 8.7.2015, at about 11.40 P.M. In the area of village Bora, statedly on account of rash and negligent driving of Truck/tipper bearing registration No. PB 65-P-9041(hereinafter to be referred as 'the offending vehicle') by respondent No.1 Sukhwinder Singh. The legal representatives of such deceased, namely his wife Resham Kaur, aged about 29 years, minor son Sukhman aged about 1 ½ years, mother Smt. Mahinder Kaur, aged about 55 years, father Chain Ram, aged about 56 years, had brought a claim petition under Section 166 of the Motor Vehicles

Act, 1988, against the respondents i;.e. Sukhwinder Singh – driver, Rajiv Kumar – owner and Iffco Tokio General Insurance Company Limited, Chandigarh – insurer of Tata Tipper bearing registration No. PB 65-P-9041.

On being issued notice, all the three respondents had appeared and contested the claim petition. On conclusion of trial, the Motor Accidents Claims Tribunal, Hoshiarpur, vide award dated 2.12.2016, accepted the claim petition and awarded compensation of Rs.12,83,000/- to the claimants with interest @ 7.5% per annum from the date of filing of claim petition till actual realization. The mode and manner of payment of compensation and its apportionment are detailed in the original award.

The petitioner- claimants were dissatisfied with the amount of compensation awarded to them and they have approached this Court by way of filing an appeal, seeking enhancement of the compensation awarded to them. Notice of that appeal was given to the respondent-Insurance company, which has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on analysis of the evidence adduced before it had taken monthly income of the deceased to be Rs.8,000/-, applying the yardstick of the wages earned by a labourer during the relevant time. In the process the plea of the claimants that the deceased was a driver by profession and was earning more than Rs.50,000/- per month, was rejected, for the reason that they could not bring any cogent and convincing evidence in that regard. I do not find anything wrong with such approach of the Tribunal.

However, the Tribunal did not add any amount towards future prospects. With the passage of time, the income of the deceased was expected to increase. He was aged about 34 years at the time of death in the motor vehicular accident.

In terms of Apex Court judgment ***National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009,*** considering age of the deceased, 40% of the earnings is to be added towards future prospects, since the deceased was aged less than 40 years. By adding that amount, the monthly income of the deceased comes out to Rs.8,000 + 3200 = Rs.11,200/-.

Considering the number of family members dependent upon the deceased, 1/4rd of the amount is to be deducted towards personal and living expenses of the deceased. By doing that, the monthly dependency of the claimants comes out to Rs. 11,200 – 2,800 = Rs.8,400/-. Accordingly, the annual dependency is calculated as Rs.8,400 x 12 = Rs.1,00,800/-.

Considering the age of the deceased, the multiplier of 16 is to be applied. By doing that the total dependency comes out to Rs. 1,00,800 x 16 = Rs.16,12,800/-.

In light of authority in ***Pranay Sethi's case (Supra)*** the claimants are entitled to get Rs.15,000/- towards loss of estate, Rs.15,000/- on funeral expenses and claimants wife is entitled to get Rs.40,000/- towards loss of consortium. Thus the total amount under the conventional Heads comes out to Rs.70,000/-.

Adding that amount, the total compensation payable to the claimants comes out to Rs. 16,12,800 + 70,000 = 16,82,800/-.

The Tribunal has awarded the compensation of Rs.12,83,000/-. Thus claimants are entitled to get additional compensation of Rs. 16,82,800 – 12,83,000 = Rs.3,99,800/-. The claimants would be entitled to get interest @ 7.5% per annum on this amount from the date of filing of appeal till actual realization. The conditions with regard to mode, manner of payment and apportionment among the claimants shall remain same as given in the original award.

With the above modifications in the impugned award, the appeal is partly allowed with costs.

(H.S. Madaan)
Judge

4.12.2019
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No