IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2640 of 2018
DECIDED ON: FEBRUARY 26, 2019

REENA AND OTHERS .....APPELLANTS

VERSUS

KRISHAN KUMAR AND OTHERS .....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tapan Kumar Yadav, Advocate
for the appellants.

Mr. Amit Kundra, Advocate
for the respondent No.2-Insurance Company.

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AVNEESH JHINGAN J. (ORAL)

The award dated 28.04.2017 passed by the Motor Accident Claims Tribunal, Gurugram (for brevity 'the Tribunal') has been assailed by the legal heirs of Ravinder Kumar (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The widow and two minor children of Ravinder Kumar are the appellants. The driver-cum-owner and insurer (i.e. The New India Assurance Company Ltd.) of car bearing registration No. HR-26-AD-0497 (hereinafter referred to as 'offending vehicle'); have been arrayed as respondents no. 1 and 2 respectively in the appeal. The parents of Ravinder Kumar have been arrayed as proforma respondents.

The brief facts necessary for adjudication of the present appeal are that a motor vehicular accident took place on 21.04.2016, the said accident proved fatal for Ravinder Kumar aged 32 years.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver-cum-owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹14,27,000/- alongwith interest @ 9% per annum. The amount awarded included ₹1,00,000/- for loss of consortium, ₹25,000/- for funeral expenses and ₹1,50,000/- for loss of love and affection.

In the claim petition, it was pleaded that the deceased was 28 years old at the time of accident and was working as Sales Executive with "M/s Bites That Never Stop" in Food Point SGT Medical College Area, Budhera and was getting monthly salary of ₹18,000/-. The claimants failed to substantiate the monthly earning of the deceased. The evidence adduced by the claimants with regard to the earnings of the deceased was not found worth reliance. The Tribunal assessed the monthly income of the deceased as ₹8,000/-, $1/4^{th}$ deduction for self-expenses was made and multiplier of 16 was applied.

Learned counsel for the appellants submits that the Tribunal erred in not awarding future prospects.

Learned counsel for the insurer defends the award and resisted any further enhancement. He further contends that the amounts awarded under the conventional heads are on higher side and no amount can be awarded for loss of love and affection.

The issues involved in the present appeal are squarely covered by the decisions of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others;*** ***2017 (4) RCR (Civil) 1009;*** ***Hem Raj vs. Oriental Insurance Company*** **Ltd.** ***2018 (2) PLR 480.***

The deceased was below 40 years and is covered in the category of self employed or having fixed wages, 40% future prospects are awarded.

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded in consonance with the decision of the Supreme Court in ***Pranay Sethi's*** case (supra). The claimants are entitled to ₹15000/- each for funeral expenses and for loss of estate. Further an amount of ₹40,000/- is awarded to the widow for loss of consortium.

There is no challenge to the loss of dependency calculated by the Tribunal of ₹11,52,000/- and 40% of ₹11,52,000/- is ₹4,60,800/-.

The amounts awarded under the conventional heads i.e. ₹2,75,000/- is reduced to ₹70,000/-.

The award dated 28.04.2017 is modified to the extent that amount of ₹14,27,000/- awarded by the Tribunal is enhanced by ₹2,55,800/-. The appellants shall be entitled to the entire amount alongwith interest as awarded by the Tribunal from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

FEBRUARY 26, 2019
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Whether speaking/reasoned: ***Yes / No***
Whether reportable : ***Yes / No***