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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.5850 of 2017
Date of Decision : 29.04.2019

Khazan Singh and others

Appellants

Versus

Ram Karan and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Dharam Pal, Advocate for
Mr. Mohinder Singh, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral)

The award dated 05.04.2017 passed by the Motor Accident Claims Tribunal, Kaithal [for brevity 'the Tribunal'] has been assailed by the claimants seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The legal representatives of Suresh Kumar (deceased) were claimants before the Tribunal. The driver, owner and insurer (i.e. IFFCO TOKIO General Insurance Company Ltd.) of Truck bearing registration No.HR-38H-5094 [hereinafter referred to as 'offending vehicle'] were respondents before the Tribunal.

The factum of accident is not disputed by the parties. A motor vehicular accident took place on 22.10.2016. The accident proved fatal for Suresh Kumar. 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 the compensation. FIR No.371, dated 22.10.2016 was registered.

In the claim proceedings, it was pleaded that Suresh Kumar was 37 years old and was working as a Mason. His earning was claimed as ₹16,500/- per month. The claimants failed to prove occupation and monthly earning of the deceased. The Tribunal assessed monthly earning of the deceased as ₹8,000/- per month; 50% deduction for self-expenses was made as the deceased was unmarried and multiplier of '11' was applied considering the age of mother of the deceased. The Tribunal awarded a sum of ₹7,78,000/- alongwith interest @ 9% per annum. The amount awarded included ₹50,000/- each to all the four claimants for loss of love & affection and ₹50,000/- for funeral expenses.

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

The contention raised by learned counsel for the appellant is that no future prospects have been awarded and the Tribunal erred in applying multiplier considering the age of mother of the deceased.

Learned counsel for the insurer argues that no amount be awarded for loss of love and affection and the amount awarded for funeral expenses is on the higher side. It is further stated that amounts awarded under the conventional heads be awarded as per decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.***

There is no challenge to the income of the deceased assessed by the Tribunal and ½ deduction made for self-expenses. The deceased was in the age group of 30-40 years and fell in the category of self-employed or a person having fixed wages. In consonance with 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 the deceased was 37 years old at the time of accident, in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** multiplier of '15' is to be applied. The Tribunal erred in applying multiplier considering the age of mother of the deceased. The issue regarding applying multiplier considering the age of deceased and not as per age of the claimants is no longer *res-integra.* The Supreme Court in the case of ***Sube Singh and another Vs. Shyam Singh (Dead) and others; (2018) 3 SCC 18*** has held as under:

> *"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be*

applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."

(*emphasis supplied)*

Further, the Supreme Court reiterated this fact in ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., (2018)4 R.C.R. (Civil) 333*** and held as under:-

"4. The Respondent Nos. 1 and 2 – i.e. the father and sister of the deceased filed an Appeal against the order of the MACT before the Punjab and Haryana High Court praying for enhancement of compensation.

The High Court held that the facts relating to the accident were admitted and proved before the MACT. It was established that the deceased had died as a result of the rash and negligent driving of Respondent No. 3.

The High Court found that the MACT had used the wrong principle for application of the multiplier. The multiplier ought to have been taken on the basis of the age of the deceased, and not of his father."

(emphasis supplied)

The Supreme Court in its recent decision in ***M/s. Royal Sundaram Alliance Insurance Company Ltd. v. Mandala Yadagari Goud and others, Civil Appeal No. 6600 of 2015. D/d. 9.4.2019*** held as under:-

"9. The focus for determination of such claim is the deceased

and what would be his contribution towards the dependents would he to be alive, for the benefits of the dependents. It is trite to say, and in fact conceded by the learned counsel for the insurance company, that in case the deceased is a married person, it is the age of the deceased which is to be taken into account. The question is whether in case the deceased is a bachelor, a different principle for calculation of the multiplier should be applied by shifting the focus to the age of the claimants? We are of the view that the answer to this question should be in the negative.

10. We may also note the importance of applying uniform settled principle to such cases. Certainty of law is important. Once the law is settled, it should not be repeatedly changed as that itself causes confusion and litigation. It is with this objection that this Court has endeavoured to settle legal principles in respect of the matter in question.

11. A reading of the judgment in Sube Singh (supra) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on : (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it *does not want to revisit the law settled in Sarla Verma case in this behalf.*

12. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.

13. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

As the quantum of compensation is being revisited, the amounts under the conventional heads are awarded as per decision of the Supreme Court in ***Pranay Sethi's case*** (supra). The claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate. No amount is awarded for loss of love and affection.

In view of above discussion, the compensation is re-calculated as under:-

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	8,000/-
40% Future Prospects	3,200/-
Sub Total	11,200/-
½ deduction for self expenses	5,600/-
Monthly Dependency	5,600/-
Annual Dependency	67,200/-
Applying multiplier of '15'	**10,08,000/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**10,38,000/-**

The award dated 05.04.2017 is modified to the extent that amount of ₹7,78,000/- awarded by the Tribunal is enhanced to ₹10,38,000/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

April 29, 2019

pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes