IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3386 of 2018
DECIDED ON: APRIL 10, 2019

SMT. BIMLA DEVI AND ANOTHER

APPELLANTS

VERSUS

SHIMBUPURI AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Manish Mehta, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 25.09.2017 passed by the Motor Accident Claims Tribunal, Narnaul (for brevity 'the Tribunal') has been assailed by the parents of Rajesh (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The driver, registered owner and insurer (i.e. United India Insurance Company Ltd.) of tralla bearing registration No. RJ-09-GC-3129 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents No.1 to 3 respectively in the appeal.

The factum of accident is not disputed by the parties. A motor vehicular accident took place 28.06.2016. The accident proved fatal for

Rajesh, aged 22 years. FIR No. 213, dated 28.06.2016 was registered at Police Station Nangal Chaudhary.

A claim petition was filed under Section 166 of the Act. The Tribunal after 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 owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

In the claim petition, it was claimed that the deceased was working in a brick kiln and was earning ₹30,000/- per month. The claimants failed to prove the monthly earning of the deceased. The Tribunal assessed the monthly earning of the deceased as ₹9000/-; 1/2 deduction for self-expenses was made, as he was bachelor and considering the age of the claimants, multiplier of '14' was applied.

The Tribunal awarded a sum of ₹8,81,000/- alongwith interest @ 9% per annum. The amount awarded included ₹25,000/- for funeral expenses and ₹1,00,000/- for loss of love and affection.

Heard learned counsel for the parties and perused the documents produced by them.

Learned counsel for the appellants contends that multiplier of '14' has wrongly been applied considering the age of the claimants. His grievance is that no future prospects have been awarded.

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

The contention raised by learned counsel for the appellants deserves acceptance. There is no dispute between the parties with regard to income of the deceased assessed by the Tribunal, age of deceased and deduction made for self-expenses.

Having due regard to the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR (2017) SC 5157*** and ***Hem Raj Vs.Oriental Insurance Company Ltd. 2018 (2) PLR 480***; 40% future prospects are awarded as the deceased fell in the category of self-employed or a person having established income.

The deceased was 22 years of age, multiplier of '18' is to be applied, in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

The issue regarding application of multiplier considering the age of the 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."*
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> *(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*** has reiterated this fact and 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.*
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> *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.*
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> *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, it would be appropriate that amounts under the conventional heads are awarded as per decision of the Supreme Court in ***Pranay Sethi's*** case (supra). The claimants shall be 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, compensation is re-calculated as under:-

	Head	**Compensation awarded**
(i)	Monthly Income	₹ 9000/- per month
(ii)	Future prospects at 40%	₹ 3600/- per month
(iii)	Total Income	₹ 12,600/- per month
(iv)	Deduction of personal expenses	₹ 6300/- (i.e. 1/2 of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	6300x12x18= ₹13,60,800/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹13,90,800/-

The award dated 25.09.2017 is modified to the extent that amount of ₹8,81,000/- awarded by the Tribunal is enhanced to ₹13,90,800/.

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.

(AVNEESH JHINGAN)
JUDGE

APRIL 10, 2019
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Whether speaking/reasoned ***Yes***
Whether reportable ***Yes***