226

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

****

FAO No.6401 of 2017
Date of Decision: 21.05.2019

Geeta and another

Appellants

Versus

Ravinder Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Sanya Sapra, Advocate for
Mr. Sandeep Sharma, Advocate
for the appellants.

Mr. Rajesh Duhan, Advocate
for respondent No.1.

None for respondent No.3-Insurer
[Oriental Insurance Co. Ltd.]

Ms. Vandanaa Malhotra, Advocate
for respondent No.5
[TATA AIG General Insurance Company Ltd.]

****

AVNEESH JHINGAN, J (Oral):

The award dated 09.02.2017 passed by the Motor Accident Claims Tribunal, Gurugram [for brevity 'the Tribunal'] has been assailed by parents of Sanchit Kataria seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver, owner and insurer (i.e. Oriental Insurance Company Ltd.) of Canter bearing registration No. HR-64-7653 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3. The owner and insurer (i.e. TATA AIG General Insurance Company Ltd.) of Car bearing registration No. HR-26CC-2765 [hereinafter referred to as 'Car'] are respondents No.4 and 5.

The brief facts necessary for adjudication of the present appeal are that on 20.12.2014, Sanchit Kataria alongwith Love Sharma, Sanjay, Ashish and Sukhbir was going from Gurgaon to Simla in Car, the same was being driven by Ashish. At about 4:00 A.M., when they reached near Jharmadi Barrier, the Car struck the offending vehicle which was parked in the middle of the road without parking lights and without any signals. As a result of the impact, Sanchit Kataria sustained injuries and died on the way to the hospital. FIR No. 261, dated 21.12.2014 was registered at Police Station Lalru, District S.A.S. Nagar.

Considering the facts and appreciating the evidence adduced, the Tribunal opined that 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.

The claimants proved that the deceased was 18 years old at the time of accident and was student of 10+2. A Certificate from the school was produced as Ex.P-7. As there was no source of income, the Tribunal assessed monthly income of the deceased as ₹5,000/- per month; ½ deduction for self-expenses was made and multiplier of '18' was applied. A total sum of ₹6,65,000/- alongwith interest @ 7.5% was awarded. 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, perused the paper book and relevant documents produced by them.

Learned counsel for the appellants contends that the deceased was a young boy, he was pursuing his 10+2 class and his income assessed by the Tribunal is on the lower side. The grievance raised is that no future prospects have been awarded and no amount has been awarded for loss of estate.

Learned counsel for respondent No.1 argues that the deceased was only a student and there was no source of income. He defends the income assessed by the Tribunal. The contention raised is that amounts 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*** and no amount be awarded for loss of love and affection.

There is no challenge to the fact that the deceased was a student of 10+2. In cases where there is a death of student, it is difficult to assess monthly earning of the deceased, as it is impossible to predict that what the future held for him.

The Supreme Court in ***M.R. Krishna Murthi Versus New India Assurance Co. Ltd., (2019) 1 ACC 730,*** has held as under:-

23. From the conjoint reading of the aforesaid judgments, inter alia, following principles can be culled out which would be relevant for deciding the instant appeal:

(i) In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the poseer would be: what would have been his income had he joined a service commensurating with the said course. That can be the future earning.

(ii) There may be cases where the victim is not, at that stage, doing any such course to get a particular job. He or she may be studying in a school. In such a case, future career would depend upon multiple factors like the family background, choice/interest of the complainant to pursue a particular career, facilities available to him/her for adopting such a career, the favourable surrounding circumstances to see which would have enabled the claimant to successfully pick up the said career etc.

If the chosen field is employment, then the future earning can be taken on the basis of salary and allowances which are payable for such calling. In case, career is a particular profession, the future earning would depend on host of other factors on the basis of which chances to achieve success in such a profession can be ascertained.

(iii) There may be cases like DeoPatodi where even a student, the claimant would have made earnings

on part-time basis or would have received offer for a particular job. In such cases, these factors would also assume relevance.

(iv) After ascertaining the likely earning of the victim in the aforesaid manner, the nature of injuries and disability suffered as a result thereof would be kept in mind while determining as to how much earning has been affected thereby. Here, impact of injuries on functional disability is to be seen. In case of death of victim, it would result in total loss of earning. In the case of injuries, the nature of disability becomes important. Such an exercise was undertaken in N. Manjegowda case."

In view of law laid down by the Supreme Court and in order to award just and equitable compensation, the income of the deceased is assessed as ₹7,000/- per month.

In consonance with the decision 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 quantum of compensation is being revisited, it would be appropriate that amounts under the conventional heads be awarded as per the 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.

There is no challenge to the ½ deduction made for self-expenses and multiplier applied of '18'.

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	7,000/-
40% Future Prospects	2,800/-
Sub Total	9,800/-
½ deduction for self expenses	4,900/-
Monthly Dependency	4,900/-
Annual Dependency	58,800/-
Applying multiplier of '18'	**10,58,400/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**10,88,400/-**

The award dated 09.02.2017 is modified to the extent that amount of ₹6,65,000/- awarded by the Tribunal is enhanced to ₹10,88,400/-.

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

May 21, 2019
pankaj baweja

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