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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

****

FAO No.6614 of 2017 (O&M)
Date of Decision: 07.03.2019

Sukhwinder Kaur and others

Appellants

Versus

Surjeet Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Arvinder Arora, Advocate
for the appellants.

Mr. R.S. Sharma, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 05.08.2016 passed by the Motor Accident Claims Tribunal, Patiala [for brevity 'the Tribunal'] has been assailed by the legal heirs of Gurcharan Singh seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The claimants are widow, three minor children and 82 years old father of the deceased. The driver, owner and insurer (i.e. The Oriental Insurance Company Ltd.) of Truck bearing registration No. PB-11AL-4935 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

Brief facts of the case are that on 26.04.2015, Gurcharan Singh (deceased) alongwith Gurvinder Singh was going from Patiala to Amritsar on a Combine bearing registration No. PB-04G-7616, which was being driven by Gurmel Singh. On their way, their Combine was hit from behind by the offending vehicle. Due to the impact, Gurcharan Singh fell down and front wheel of the Combine ran over both the legs of Gurcharan Singh. He was taken to Doraha Hospital from where he was referred to Apollo Hospital, where he succumbed to the injuries. FIR No.85, dated 27.04.2015 was registered at Police Station Sahnewal.

A claim petition was filed under Section 166 of the Act. The Tribunal opined that the accident was caused due to the rash and negligent driving of the offending vehicle. In the claim petition, it was pleaded that the deceased was co-owner of the Combine and doing Dairy Farming and welding work. His monthly income was claimed to be ₹40,000/-. The claimants failed to substantiate occupation and monthly earning of the deceased.

The Tribunal after considering the fact that he was co-owner of the Combine and was doing welding work also, assessed monthly earning of the deceased as ₹15,000/-; 1/4th deduction for self-expenses was made and multiplier of '14' was applied considering him to be 44 years old. The fact had come on record that his date of birth was 10.03.1979, according to which he was 37 years old at the time of accident. The Tribunal awarded compensation of ₹21,15,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹1,00,000/- for loss of consortium; ₹1,00,000/- for loss of love & affection and ₹25,000/- for funeral expenses. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

Learned counsel for the appellants contends that no future prospects have been awarded and multiplier of '14' has wrongly been applied.

Learned counsel for the insurer defends the award and argues that the amounts awarded under conventional heads are on the higher side and no amount be awarded for loss of love and affection.

The Driving Licence of the deceased was produced before the Tribunal, according to which the date of birth of the deceased was 10.03.1979. The Tribunal relied upon the date of birth but while calculating the compensation, age of the deceased was taken as 44 years instead of 37 years. In view of decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***, multiplier of '15' is applied.

Since the deceased was below 40 years of age and would fall under the category of self-employed or a person having fixed wages, 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 quantum of compensation is being re-visited, compensation under conventional heads is 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. ₹40,000/- are awarded to the widow for loss of consortium.

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	15,000/-
40 % Future Prospects	(+) 6,000/-
Sub Total	21,000/-
1/4th deduction for self expenses	(-) 5,250/-
Monthly Dependency	15,750/-
Annual Dependency	1,89,000/-
Applying multiplier of '15'	**28,35,000/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**40,000/-**
Grand Total	**29,05,000/-**

The award dated 05.08.2016 is modified to the extent that amount of ₹21,15,000/- awarded by the Tribunal is enhanced to ₹29,05,000/-.

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

March 07, 2019

pankaj baweja

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