IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4015 of 2018 (O&M)
DATE OF DECISION: JANUARY 17, 2019

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

.......APPELLANT

VERSUS

SUBHASH CHAND & OTHERS

......RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sachin Ohri, Advocate
for the appellant.

Mr. Ashit Malik, Advocate
for respondents No.1 and 2.

None for respondents No.3 and 4.

*****

AVNEESH JHINGAN, J.(oral)

The award dated 02.05.2018 passed by the Motor Accident Claims Tribunal, Kaithal (for short 'the Tribunal') has been assailed by the insurer of bus bearing registration No. HR-64-6841 (hereinafter referred to as 'offending vehicle') for reducing the compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The claimants have been arrayed as respondents No. 1 and 2 respectively in the appeal. The driver and owner of the offending vehicle have been arrayed as respondents No.3 and 4 respectively in the appeal.

The necessary facts for the adjudication of the present appeal are that on 03.11.2017, Subhash Chand and his mother Ramdei were going to the fields for harvesting crops. On their way, Ramdei was hit by a rashly and negligently driven offending vehicle. As a result of the accident, she sustained grievous injuries and was taken to General Hospital, Kaithal where she was declared dead. FIR No. 251, dated 03.11.2017 was registered at Police Station Kalayat.

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 insurer of the offending vehicle was held liable to pay compensation. The Tribunal assessed the notional income of the deceased as ₹11,000/- per month· 10% future prospects were awarded and multiplier of 9 was applied. The Tribunal awarded a sum of ₹13,36,800/- along with interest at the rate of 7.5% per annum. The amount awarded included ₹15,000/- each for funeral expenses and loss of estate.

Heard learned counsel for the parties, perused the paper book and record.

Learned counsel for the appellant contends that the claimants failed to prove the monthly earnings of the deceased, she was considered a house-wife. His grievance is that the monthly income assessed by the Tribunal is on the higher side and no future prospects should have been awarded.

Learned counsel for the claimants contends that the deceased was 60 years old and was helping her son in the agriculture work, she was a house maker. He defends the award but could not raise any serious dispute that no future prospects are to be awarded.

There is is no dispute between the parties with regard to the multiplier applied of 9 and the amount of ₹30,000/- awarded under the conventions heads.

The contention raised by learned counsel for the appellant deserves acceptance.

The Apex Court in ***Jitendra Khimshankar Trivedi and others vs. Kasam Daud Kumbhar and others;*** ***2015 (4) SCC 237,*** has held as under:

> *"Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."*

In the cases where the income of the deceased is not proved, the safest yardstick would be to rely upon the minimum wages prevalent in the State at the time of accident. Though the contribution of a house maker of the family cannot be measured in a monetary term. Still, minimum wages can be a yardstick to rely upon.

Keeping in view the fact that the deceased was 60 years old and the minimum wages prevalent in the State at the time of accident was ₹10,064/-, it would be appropriate to assess the monthly income of the deceased as ₹10,000/-. No future prospects are to be awarded.

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

	Head	**Compensation awarded**
(i)	Income	₹ 10,000/- per month
(ii)	Total Income	₹ 1,20,000/- per month
(iii)	Multiplier	9
(iv)	Loss of income	1,20,000x9= ₹10,80,000/-
(v)	Funeral expenses	₹15,000/-
(vi)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹11,10,000/-

The award dated 02.05.2018 is modified to the extent that amount of ₹13,36,800/- awarded by the Tribunal is reduced to ₹11,10,000/-. Vide order dated 18.07.2018, while issuing notice of motion recovery of amount of compensation beyond ₹11,00,000/- was stayed. Claimants shall be entitled to the balance 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 partly allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

JANUARY 17, 2019
sham
Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No