IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 678 of 2017
Date of decision: 4.2.2019

Mahender and others

.. Appellants

v.

Anand and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sumit Sharma, Advocate for the appellants.
Mr. A. S. Sidhu, Advocate for respondent No. 3.

...

AVNEESH JHINGAN, J. (Oral)

The legal heirs of Naresh Kumar (deceased) are in appeal against the award dated 17.5.2016 passed by the Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal') seeking enhancement of compensation of ₹9,41,000/- awarded along with interest @ 9% per annum under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The respondents in the appeal are the driver of Wagon-R car bearing registration No. HR-16L-2003 (hereinafter referred to as 'the offending vehicle'), owner and the insurer (i.e. ICICI Lombard General Insurance Company Limited) of the offending vehicle.

The facts in brief are that on 17.3.2015, Naresh Kumar along with his cousin-Balwan was riding a motor cycle bearing registration No. HR-19F/5476. They were going from village Haroda Khurd to village Mandhi Hariya. On their way, the motor cycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Naresh

Kumar sustained grievous injuries and was admitted in General Hospital, Bhiwani, from where he was referred to PGIMS Rohtak and thereafter he was taken to Safdarjung Hospital, New Delhi. He succumbed to injuries on 8.4.2015. FIR No. 73 dated 19.3.2015 was registered at Police Station, Badhra.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held the accident was caused due to rash and negligent driving of the offending vehicle. The owner, driver and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

The claimants (appellants herein) before the Tribunal pleaded that the deceased was 25 years old at the time of accident. The monthly income of the deceased was assessed as ₹8,000/-, ½ deduction for self-expenses was made and multiplier of 17 was applied by considering the age of the deceased as 24 years as per post-mortem report. A sum of ₹9,41,000/- was awarded along with interest @ 9% per annum. The amount awarded included ₹1,00,000/- for loss of love and affection and ₹25,000/- for funeral expenses.

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

Learned counsel for the appellants argues that no future prospects have been awarded and the Tribunal erred in applying the multiplier of 17 instead of 18.

Learned counsel for the insurer contends that the amount awarded for funeral expenses is on the higher side and no amount can be awarded for loss of love and affection.

There is no dispute between the parties with regard to the income of the deceased assessed by the Tribunal and ½ deduction made for self-expenses.

The contention raised by learned counsel for the appellants deserves acceptance. The deceased was below 40 years of age and would fall within the category of self employed or having fixed wages. Having due regard to the decisions of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157** and **Hem Raj v. Oriental Insurance Company Ltd., 2018 (2) PLR 480,** 40% future prospects are awarded.

In the claim petition, it was pleaded that the deceased was 25 years old. As per post mortem report, the age of the deceased was mentioned as 24 years. The Tribunal considering the age as per the post mortem report applied the multiplier of 17. As per decision of the Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 21,** for a deceased of age group of 20 to 25 years, multiplier of 18 is to be applied. Even if the age as per the pleadings in the claim petition is taken, still the multiplier would be 18.

As the quantum of compensation is being re-visited, it would be appropriate the amounts awarded under the conventional heads are made in consonance with the decision of the Supreme Court in **Pranay Sethi's** case (supra). The claimants are awarded ₹15,000/- each for funeral expenses and loss of estate. No amount can be awarded for loss of love and affection.

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

Particulars	***Amount awarded in ₹***
Monthly income	8,000/-
40% future prospects	3,200/-
Total income	11,200/-
½ deduction for self expenses	5,600/-
Applying multiplier of '18'	12,09,600/-
Funeral expenses	15,000/-
Loss of estate	15,000/-
Total compensation awarded	12,39,600/-

The award dated 17.5.2016 is modified to the extent that the amount awarded by the Tribunal to the tune of ₹9,41,000/- is enhanced to ₹12,39,600/-. The appellants shall be entitled to the enhanced amount along with interest @ 7.5% per annum from the date of filing of the claim petition till realization of amount.

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

4.2.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No