250

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-459-2018 (O&M)
Date of decision:-14.05.2019

Smt. Rahila and another ....Appellants

Versus

Aabid Khan alias Aabid and another ....Respondents

CORAM: HON'BLE Mr. JUSTICE AVNEESH JHINGAN

Present:- Mr. Chetan Kapoor, Advocate for
Mr. Ashish Gupta, Advocate
for the appellants.

Mr. R.C.Kapoor, Advocate
for the respondents.

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AVNEESH JHINGAN J. (Oral)

The award dated 06.10.2017 passed by the Motor Accident Claims Tribunal, Mewat (for short 'the Tribunal') has been assailed by the the parents of Abdul Kayyum (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The driver-cum-owner of the Dumper bearing registration No. HR-74A-7293 (hereinafter referred to as 'the offending vehicle') and insurer (i.e. The New India Assurance Company Limited) have been arrayed as respondents No. 1 and 2, respectively, in the appeal.

The factum of the accident has not been disputed by the parties. A motor accident took place on 17.01.2017 which proved fatal for Abdul Kayyum aged 19 years old. 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 driver, owner and the Insurer of the offending vehicle were held jointly and severally liable to pay the compensation. FIR No. 32 dated 17.01.2017 was registered at Police Station Nuh.

A claim petition was filed under Section 166 of the Act and it was pleaded that the deceased was running a shop of tyre retreading and earning ₹20,000/- per month. The claimants failed to substantiate the earning of the deceased. The Tribunal assessed earning of the deceased as ₹ 8000/- per month, ½ deduction was made for self-expenses as he was bachelor and multiplier of '15' was applied considering the age of parents of the deceased. The Tribunal awarded a sum of ₹8,45,000/- along with interest @ 7% per annum. The amount awarded included ₹ 1,00,000/- on account of loss of love and affection and ₹ 25,000/- for funeral expenses.

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

Learned counsel for the appellants contends that no future prospects have been awarded; the Tribunal erred in applying multiplier of '15' considering the age of the parents. The grievance is that no amount has been awarded for loss of estate.

Learned counsel for the Insurer vehemently defended the award and argues that the amount awarded under conventional heads is on higher side and no amount to be awarded for loss of love and affection.

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

There is no challenge to the monthly income of the deceased assessed by the Tribunal, ½ deduction was made for self-expenses and also to the age of the deceased.

The deceased was below 40 years at the time of accident, 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 person having fixed wages.

The claimants are also entitled to ₹ 15,000/- each for funeral expenses and for loss of estate as per the the decision of the Supreme Court in ***Pranay Sethi's case (supra).*** No amount is awarded for loss of love and affection.

The Tribunal erred in applying multiplier of '15' considering the age of the parents instead of considering the age of the deceased. The deceased was 19 years of age as per the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***, multiplier of '18' is applied.

The issue regarding applying multiplier by considering the age of the deceased and not 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."*

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."

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased as assessed	8000/-
40 % Future Prospects	3200/-
½ deduction for self expenses	5600/-
Applying multiplier of '18'	12,09,600/-
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**12,39,600/-**

The award dated 06.10.2017 is modified to the extent that the amount of ₹ 8,45,000/- awarded by the Tribunal is enhanced to ₹12,39,600/-.

The appellants shall be entitled to the enhanced amount alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the afore-said terms.

14th May, 2019 **(AVNEESH JHINGAN)**
shabha **JUDGE**

Whether speaking/reasoned *Yes*
Whether reportable *Yes*