246

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.470 of 2018 (O&M)
Date of Decision: 22.02.2019

Paramjit Kaur and another

Appellants

Versus

Mihi Lal and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashwani Bakshi, Advocate for the appellants.

Mr. Vinod Gupta, Advocate for respondent No.3.

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AVNEESH JHINGAN, J (Oral):

The award dated 03.07.2017 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri [for brevity 'the Tribunal'] has been assailed in appeal by the parents of Rohit (deceased), aged 18/19 years, 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. National Insurance Company Ltd.) of canter bearing registration No. UP-30T-2108 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3, respectively, in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 31.03.2015 [wrongly mentioned in the second paragraph of the award as 21.12.2013], Rohit alongwith others was going to village Ajijpur Kalan from Bilaspur on a motorcycle. When they reached near Vishal Dharam Kanta, the motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, occupants fell down and the offending vehicle ran over Rohit and he died at the spot. FIR No.55, dated 01.04.2015 was registered at Police Station Bilaspur.

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 owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

In the claim petition, it was pleaded that the deceased was a matriculate. The claimant failed to prove earning of deceased, the Tribunal considered him as an unskilled labourer and assessed his monthly earning as ₹5,640/-; ½ deduction for self-expenses was made and considering the age of the mother of the deceased, multiplier of '14' was applied. The Tribunal awarded a sum of ₹5,98,760/- alongwith interest @ 7.5% 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.

The grievance raised by learned counsel for the appellants is that monthly income of the deceased assessed by the Tribunal is on the lower side, no future prospects have been awarded, multiplier has wrongly been applied considering the age of mother of the deceased and no amount for loss of estate has been awarded.

Learned counsel for the insurer while defending the award argues that the deceased was a student only and was not having any source of income. He defends the monthly income assessed by the Tribunal. He further argues that amounts awarded under the conventional heads are on the higher side.

The claimants are unfortunate parents who have lost their young son in a motor vehicular accident. The deceased was a matriculate. In cases where the deceased is not working or his occupation and monthly earning is not substantiated, income has to be assessed by taking into consideration the minimum wages prevalent in the State at the time of accident. As the deceased was a matriculate, it would not be appropriate to equate him with an unskilled labourer as it is virtually impossible to state as to what the future had for him. Still in order to arrive at just and equitable compensation and taking a clue from the minimum wages prevalent in the State at relevant time, monthly income of the deceased is assessed as ₹6,000/-.

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. The claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate. No amount is awarded for loss of love and affection.

Since the deceased was 18/19 years old at the time of accident, multiplier of '18' is to be applied in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.*** The issue that the multiplier is to be applied considering the age of the deceased and not as per age 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*

<u>*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."*</u>

(emphasis supplied)

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	6,000/-
40% Future Prospects	2,400/-
Sub Total	8,400/-
1/2 deduction for self expenses	4,200/-
Monthly Dependency	4,200/-
Annual Dependency	50,400/-
Applying multiplier of '18'	**9,07,200/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**9,37,200/-**

The award dated 03.07.2017 is modified to the extent that amount of ₹5,98,760/- awarded by the Tribunal is enhanced to ₹9,37,200/-.

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

February 22, 2019
pankaj baweja

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