IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5082 of 2018
DECIDED ON: MARCH 05, 2019

JAIN BAHADUR AND OTHERS

.....APPELLANTS

VERSUS

JASWANT SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Anil Ghanghas, Advocate
for the appellants.

Mr. Rajneesh Malhotra, Advocate
for the respondent-Insurance Company.

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AVNEESH JHINGAN J. (ORAL)

The award dated 10.11.2017 passed by the Motor Accident Claims Tribunal, Panchkula (for brevity 'the Tribunal') has been assailed by the legal heirs of Geeta @ Tulsi (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

Husband and two minor children of Geeta @ Tulsi are the appellants. The driver, owner and insurer (i.e. Bharti AXA General Insurance Co. Ltd.) of Tata Truck bearing registration No. HR-68-A-2037 (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 a motor vehicular accident took place on 19.07.2016 in which Geeta @ Tulsi lost her life. FIR No. 239, dated 20.07.2016 was registered at Police Station Sector 5, Panchkula.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹15,79,600/- alongwith interest @ 7.5% per annum. The amount awarded included ₹15,000/- each for loss of estate and for funeral expenses and ₹40,000/- for loss of consortium.

In the claim petition, it was pleaded that the deceased was 30 years old at the time of accident and was a domestic helper with Dr. Suman Bhambu Dahiya, Assistant Professor in Government College, Barwala and was being paid ₹10,000/- per month. The employer appeared before the Tribunal as PW-4 and deposed that she was paying ₹10,000/- per month to the deceased. The Tribunal assessed the monthly income of the deceased as ₹8000/-, 40% future prospects were awarded; 1/3rd deduction for self-expenses was made and multiplier of 17 was applied.

Learned counsel for the appellants contends that though the claimants were able to prove the earning of the deceased yet the Tribunal erred in assessing the monthly income of the deceased as ₹8000/-, which is even less than the minimum wages prevalent in the State at the time of accident for an unskilled labourer. No other issue has been raised.

Learned counsel for the insurer defends the award and resisted any further enhancement.

The Tribunal noted the fact that the minimum wages prevalent in the State at the time of accident were approximately ₹9,300/-. In the present case the employer appeared before the Tribunal as PW-4 and deposed that she was paying ₹10,000/- per month to the deceased. She further stated that she was an income tax payee. For the domestic helper generally no record is maintained. There was no reason given by the Tribunal for not relying upon the deposition of PW-4, more so, when the payment claimed to be made was almost as per minimum wages.

The compensation is re-calculated by considering the monthly income of the deceased as ₹10,000/-.

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

	Head	**Compensation awarded**
(i)	Monthly income	₹ 10,000/-
(ii)	Future prospects at 40%	₹ 4000/-
(iii)	Total Income	₹ 14,000/- per month
(iv)	Deduction of personal expenses	₹ 4667/- (i.e. 1/3rd of total income)
(v)	Multiplier	17 (as per age of deceased)
(vi)	Loss of income	9333x12x17= ₹19,03,932/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹ 40,000/-
	Total Compensation awarded	₹19,73,932/-

The award dated 10.11.2017 is modified to the extent that amount of ₹15,79,600/- awarded by the Tribunal is enhanced to ₹19,73,932/-. The appellants shall be entitled to the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed.

(AVNEESH JHINGAN)
JUDGE

MARCH 05, 2019
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Whether speaking/reasoned: ***Yes***
Whether reportable : ***No***