IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5569 of 2018 (O&M)

Date of Decision: 07.05.2019

Smt. Krishna and another

.......Appellants

Versus

Sukhbir and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Subhash Rana, Advocate
for the appellants.

AVNEESH JHINGAN, J.(oral)

The award dated 6.10.2017 passed by the Motor Accident Claims Tribunal, Jind has been assailed by the legal representatives of Om Parkash seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The appellants are the widow and 26 years old son of the deceased. Driver, owner and insurer (i.e. United India Insurance Company) of the Dumper Truck bearing registration No.HR-39-D-0228 have been arrayed as respondents No. 1 to 3. Other sons and daughters of the deceased have been arrayed as proforma respondents.

The facts necessary for adjudication of the present appeal are that on 27.3.2016 Om Parkash along with his wife was driving a Panther Vicky bearing registration No.HR-31B/9115 and when they reached near Lal Chowk Jind, the two wheeler was struck by the offending vehicle. As a result of the impact, Om Parkash sustained grievous injuries. He was taken to General

Hospital, where Doctor declared him brought dead. FIR No. 197 dated 28.3.2016 was registered.

In the claim proceedings, the Tribunal came to the conclusion that the accident was result of rash and negligent driving of the offending vehicle. Owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

The claimants pleaded that the deceased was 65 years of age and was earning ₹ 9000/- per month. No proof was produced with regard to the age of the deceased and the earning claimed. The Tribunal considering the fact that deceased was pleaded to be 65 years of age and taking into consideration the minimum wages assessed the monthly earning as ₹ 6000/-, made 1/3rd deduction for self-expenses and multiplier of 7 was applied. The Tribunal awarded a sum of ₹ 4,61,000/- along with interest at the rate of 7.5% per annum. The amount awarded included ₹ 25,000/- for funeral expenses and ₹ 50,000/- for loss of love & affection and pain & suffering.

Heard learned counsel for the appellants and perused the relevant documents produced by him.

Learned counsel for the appellants argued that the income assessed of the deceased is on lower side; no future prospects have been awarded and no amount has been awarded for loss of consortium and loss of estate.

The contention raised lacks merit.

The deceased was 65 years of age as pleaded. The claimants failed to prove the earning and occupation of the deceased, in cases where there is no proof with regard to the earning of the deceased, one of the yardstick to be considered is the minimum wages. The minimum wages at the relevant time is not the only factor to be considered. The Tribunal considered the fact that a labourer of 65 years of age may not get the same employment or the consideration in lieu of the employment as a young person and assessed monthly earning as ₹ 6000/-. No ground has been made out for interfering in the income assessed.

The contention raised by learned counsel for the appellants with regard to awarding of future prospects is against the decision of the Five Judges Bench of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.*** The Supreme Court has held as under:

> "60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-exmployed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistencey in the approach by the tribunals and the courts.
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> 61. In view of the aforesaid analysis, we proceed to record our conclusions:-
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> (i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has

been held by another coordinate Bench.
(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.
(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component. xx xx xx xx "

....(emphasis supplied).

In view of the decision of the Constitutional Bench, no future prospects are to be awarded if deceased was above 60 years of age at the time of accident.

The grievance raised is that no amount has been awarded for loss of consortium and loss of estate. From the perusal of the award it is evident that ₹ 25,000/- has been awarded for funeral expenses and ₹ 50,000/- has been awarded for pain & suffering and loss of love & affection. It would be pertient to note here that present is a case for claiming compensation for death in a motor vehicular accident and not on account of injuries sustained. Yet, the Tribunal considered the head of pain and suffering.

The Supreme court in case of **Pranay Sethi's case (supra**) has held that the claimants shall be entittled to ₹ 15,000/- each for loss of estate and funeral expenses and ₹ 40,000/- for loss of consortium and no amount is to be awarded for loss of love and affection. If the amount awarded under the heads of funeral expenses, loss of love & affection and pain & suffering, are considered in totality, the amount awarded are more than ₹ 70,000/- as the claimants are entitled according to the decision of the Supreme Court.

No case is made out for further enhancement.

The appeal is accordingly dismissed.

(AVNEESH JHINGAN)
JUDGE

07.05.2019
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No