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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.5935 of 2018
Date of Decision : 04.04.2019

Sunita and others

Appellants

Versus

Subhash and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. R.C. Kapoor, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral)

The award dated 07.03.2018 passed by the Motor Accident Claims Tribunal, Jind [for brevity 'the Tribunal'] has been assailed by widow and three children of Ram Kumar.

The driver, owner and insurer (i.e. The New India Assurance Company Ltd.) of Tata Cargo bearing registration No. HR-39A-2085 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal. Four daughters of Ram Kumar in the age group of 24-34 have been arrayed as proforma respondents.

The facts necessary for adjudication of the present appeal are that on 11.03.2017, Ram Kumar was riding a bicycle. On his way, bicycle was hit by the offending vehicle, as a result of the impact, Ram Kumar fell down and the offending vehicle ran over him. He died at the spot, FIR was registered.

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 proceedings, it was claimed that the deceased that doing a private job and his earning was claimed to be ₹20,000/- per month. The claimants failed to substantiate occupation and monthly earning of the deceased. The Tribunal assessed monthly earning of the deceased as ₹9,000/-; 1/4th deduction for self-expenses was made and multiplier of '9' was applied considering him to be in the age group of 55-60 years. It would be pertinent to note here that no evidence with regard to proof of age of the deceased was produced. It was deposed by the widow in her statement that the deceased was 52 years old. Keeping in view the fact that widow was 51 years old and his elder daughter was 34 years old at the time of accident, the Tribunal considered that the deceased was in the age group of 55-60 years. The Tribunal awarded compensation of ₹7,84,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹40,000/- for loss of consortium and ₹15,000/- for funeral expenses.

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

The grievance raised by learned counsel for the appellants is that no future prospects have been awarded and no amount has been awarded for loss of estate. Per contra, learned counsel for the insurer could not raise any serious dispute in view of settled position of law.

Considering the fact that income of the deceased was assessed; he would fall in the category of self-employed or a person having fixed wages and he was in the age group of 55-60 years, in consonance with the decision 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,*** 10% future prospects are awarded. As there is no challenge to the loss of dependency i.e. ₹7,29,000/- calculated by the Tribunal, 10% of the said amount i.e. ₹72,900/- are awarded as future prospects.

The claimants shall also be entitled to ₹15,000/- for loss of estate.

The net effect is that award dated 07.03.2018 is modified to the extent that amount of ₹7,84,000/- awarded by the Tribunal is enhanced by ₹87,900/-.

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.

[AVNEESH JHINGAN]
JUDGE

April 04, 2019

pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : No