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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.6044 of 2018 (O&M) with
XOBJC No.249-CII of 2018
Date of Decision: 25.02.2019

Lakhveer Kaur @ Rani and others

Appellants

Versus

Karai Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Siddharth Gupta, Advocate
for the appellants.

Mr. Pradeep Kumar, Advocate
for respondent No.3-Cross Objector.

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<u>AVNEESH JHINGAN, J (Oral):</u>

The award dated 06.08.2015 passed by the Motor Accident Claims Tribunal, Faridkot [for brevity 'the Tribunal'] has been assailed in appeal by the legal heirs of Jugraj Singh @ Neela (deceased), seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] for death of Jugraj Singh and Jashanpreet Kaur (daughter of Jugraj Singh).

The insurer of Scorpio Hawk bearing registration No. PB-04P-2799 [hereinafter referred to as 'offending vehicle'] has filed the cross-objections raising grievance with regard to multiplier applied by the Tribunal while awarding the compensation.

The driver, owner and insurer (i.e. Universal Sompo General Insurance Co. Ltd.) of the offending vehicle have been arrayed as respondents No.1 to 3, respectively, in the appeal.

The brief facts of the appeal and cross-objections are that on 06.04.2011, Jugraj Singh alongwith his daughter Jashanpreet Kaur was going to Bajakhana on a rickshaw-rehri for buying some goods. They were being followed by Lakhveer Kaur and Manjit Kaur. On the way, the Rehri was hit by the offending vehicle. As a result of the impact, Jugraj Singh and Jashanpreet Kaur fell on the road and received multiple injuries. Both of them died at the spot. FIR was registered at Police Station Bajakhana.

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 Jugraj Singh was working as a Chowkidar in a Marriage Palace and earning ₹10,000/- per month as salary and earning ₹5,000/- per month by selling milk of buffaloes. The claimants failed to produce any reliable evidence to substantiate the occupation and monthly earning of the deceased. The Tribunal assessed monthly income of the deceased as ₹5,200/- relying upon the minimum wages prevalent in the State at the time of accident; 1/3rd deduction for self-expenses was made and multiplier of '16' was applied. A sum of ₹7,27,800/- was awarded by the Tribunal alongwith conditional interest @ 6% per annum, if the amount was paid within 3 months and interest @ 7.5%, in case of default. The amount awarded included ₹75,000/- under the conventional heads. Further, a lump sum amount of ₹1,50,000/- was awarded for death of Jashanpreet Kaur and ₹50,000/- was awarded for funeral expenses and loss of love & affection.

Heard learned counsel for the parties, perused the paper book and record.

Learned counsel for the appellants contends that no future prospects have been awarded in claim petition filed by legal heirs of Jugraj Singh. The grievance is that multiplier method has not been applied while calculating the compensation for death of Jashanpreet Kaur. The challenge is to the rate of interest awarded by the Tribunal that the same is on the lower side and the Tribunal erred in putting conditions with regard to rate of interest.

Learned counsel for the insurer argues that the deceased Jugraj Singh was 38 years old at the time of accident. The Tribunal wrongly applied multiplier of '16' instead of '15'. He argues that the amounts awarded under the conventional heads be made in consonance with the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.*** Further, he defends the compensation awarded for death of Jashanpreet Kaur. He argues that the deceased was only six years old and there was no source of income of the deceased.

The contention raised by learned counsel for the appellants that future prospects be awarded deserves acceptance. In consonance with the decisions of the Supreme Court in ***Pranay Sethi's case*** (supra) and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** as the deceased was below 40 years of age at the time of accident and falls under the category of self-employed or a person having fixed wages, 40% future prospects are awarded.

As the quantum of compensation is being revisited, it is considered appropriate that multiplier is made in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.*** There is no dispute that the deceased was 38 years old at the time of accident, a multiplier of '15' is applied. In view of decision of the Supreme Court in ***Pranay Sethi's case*** (supra), the claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium.

There is no dispute with regard to income assessed of the deceased and deduction made for self-expenses.

In view of above discussion, compensation for death of Jugraj Singh is re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	5,200/-
40 % Future Prospects	(+) 2,080/-
Sub Total	7,280/-
1/3 deduction for self expenses	(-) 2,426/-
Monthly Dependency	4,854/-
Annual Dependency	58,248/-
Applying multiplier of '15'	**8,73,720/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**40,000/-**
Grand Total	**9,43,720/-**

As regards compensation for death of Jashanpreet Kaur, it would be relevant to note that Lakhveer Kaur lost her husband and young daughter. No amount of monetary compensation can fulfil or console the parent for loss of a child. While discharging the duty to arrive at just and equitable compensation, it is considered appropriate that the multiplier method is applied.

The Supreme Court in ***Sandeep Khanuja Versus Atul Dande and another 2017(3) SCC 351*** has held as under:

> *"12. We may observe at the outset that it is now a settled principle, repeatedly stated and restated time and again by this Court, that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as 'principle of multiplier', has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident.*

Recognition to this principle was given for the first time in the year 1966 in the case of ***Municipal Corporation of Delhi v. Subhagwanti&Ors., (1966) 3 SCR 649*** *Again, in* ***Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal v. Sudhakar&Ors. (1977) 3 SCC 64****, the Court referred to an English decision while emphasising the import of this principle in the following manner:*

> *"4. A method of assessing damages, usually followed in England, as appears from* ***Mallet v. McMonagle 1969 ACJ 312 (HL. England)****, is to calculate the net pecuniary loss upon an annual basis and to "arrive at the total award by multiplying the figure assessed as the amount of the annual `dependency' by a number of `year's purchase' that is the number of years the benefit was expected to last, taking into consideration the imponderable factors in fixing either the multiplier or the multiplicand..."*

13. While applying the multiplier method, future prospects on advancement in life and career are taken into consideration. In a proceeding under Section 166 of the Act relating to death of the victim, multiplier method is applied after taking into consideration the loss of income to the family of the deceased that resulted due to the said demise. Thus, the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased or that of the claimant, as the case may be. In injury cases, the description of the nature of injury and the permanent disablement are the relevant factors and it has to be seen as to what would be the impact of such injury/disablement on the earning capacity of the injured. This Court, in the case of ***U.P. State Road Transport Corporation &Ors.v. Trilok***

Chandra & Ors. 1996(2) R.R.R. 718 : (1996) 4 SCC 362 *justified the application of multiplier method in the following manner:*

"13. It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110-B, Motor Vehicles Act, 1939 (corresponding to the present provision of Section 168, Motor Vehicles Act, 1988) envisaged payment of `just' compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country."

The multiplier system is, thus, based on the doctrine of equity, equality and necessity. A departure therefrom is to be done only in rare and exceptional cases."

The Five Judges' Bench in ***Pranay Sethi's case*** (supra) while concurring with the view taken in ***Sarla Verma's case (supra)*** and considered in ***Reshma Kumari v. Madan Mohan, (2009) 13 SCC 422*** held as under:

"42. The conclusions that have been summed up in Reshma Kumari are as follows:-

"43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the Table prepared in Sarla Verma read with para 42 of that judgment.

43.2. In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma should be followed.

43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma for determination of compensation in cases of death.

43.5. While making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in Sarla Verma.

43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 41 above."

In view of above decision, multiplier of '15' is to be applied as the deceased was below 15 years of age. Further, the notional income of the deceased is assessed as ₹30,000/- per annum in view of decision of the Supreme Court in case of ***Kishan Gopal and another Vs. Lala and others; (2014) 1 SCC 244.*** The claimants are from that strata of the society which struggles to make two ends meet. Every hand of the family is an earning hand. Section 163-A of the Act has been amended in the year 2018, though with prospective effect, wherein lump sum of ₹5,00,000/- is provided for death in cases where the claim petition is filed under Section 163-A of the Act. Having clue from the decision of the Supreme Court in ***Kishan Gopal's case*** (supra) and the amendment made, compensation of ₹4,65,000/- is awarded for death of Jashanpreet Kaur. [₹30,000/- (notional income) x '15' multiplier] which includes ₹15,000/- for funeral expenses.

The Tribunal erred in awarding conditional interest. The Supreme Court in ***National Insurance Co. Ltd. Vs. Keshav Bahadur and others 2004(2) SCC 370,*** held as under:-

> *"Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal."*

In view of above decision, considering the bank's rate of interest prevalent at the time of accident, claimants are held entitled to the compensation for death of Jugraj Singh and Jashanpreet Kaur alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal and cross-objections are disposed of in aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

February 25, 2019
pankaj baweja

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