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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.998 of 2017 (O&M)
Date of Decision : 11.04.2019

Oriental Insurance Company Ltd.

Appellant

Versus

Savitri and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Jaspreet Kaur Somal, Advocate for
Mr. Ashish Yadav, Advocate
for the appellant.

Mr. Sudhir Hooda, Advocate
for respondent No.1.

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AVNEESH JHINGAN, J (Oral)

The award dated 16.11.2016 passed by the Motor Accident Claims Tribunal, Bhiwani [for brevity 'the Tribunal'] has been assailed by the insurer of Motorcycle bearing registration No. HR-48A-8722 [hereinafter referred to as 'offending vehicle'] being aggrieved of quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The widow i.e. claimant, owner and driver of the offending vehicle have been arrayed as respondents No.1 to 3, respectively in the appeal.

The factum of accident has not been disputed by the parties. A motor vehicular accident took place on 25.09.2015. The accident proved fatal for Dulichand, aged 56 years. The accident was result of rash and negligent driving of the offending vehicle. FIR No.398, dated 25.09.2015 was registered at Police Station Tosham. The driver, owner 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 working as a Mason and was earning ₹21,000/- per month. The claimant failed to prove monthly earning of the deceased. Though PW-1 Om Pal and PW-4 Ishwar deposed that the deceased was a Mason and was earning ₹700/- per day, the Tribunal assessed monthly earning of the deceased as ₹8,000/-, considering him to be a daily wager; 30% future prospects were awarded; multiplier of '9' was applied and 1/3rd deduction for self-expenses was made. The Tribunal awarded compensation of ₹8,78,872/- alongwith interest @ 7.5% per annum. The amount awarded included ₹1,00,000/- for loss of consortium; ₹25,000/- for funeral expenses and ₹5,000/- for loss of estate.

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

Learned counsel for the appellant contends that income assessed by the Tribunal is on the higher side as it is much more than the minimum wages prevalent in the State at the time of accident. The grievance raised is that the Tribunal erred in awarding 30% future prospects as the deceased was 56 years old at the time of accident. She prays that amounts under the conventional heads be awarded as per decisions of the Supreme

Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.***

Learned counsel for the claimant defends the income assessed by the Tribunal. He argues that deceased was a Mason and cannot be considered as an unskilled labourer.

The claimant failed to prove earning of the deceased though from the deposition of PW-1 and PW-4, it was forthcoming that he was working as Mason, in such circumstances, it would not be appropriate to treat him as an unskilled labourer. Having a clue from the minimum wages prevalent in the State at the time of accident, taking into consideration the facts in entirety and in order to arrive at a just and equitable compensation, monthly income of the deceased is assessed as ₹7,000/- per month.

The deceased was 56 years old at the time of accident and fell in the category of self-employed or a person having fixed wages. 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***, 10% future prospects are awarded. The claimant shall be entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded for loss of consortium.

There is no dispute between the parties with regard to deduction made for self-expenses and multiplier applied.

In view of above discussion, compensation is re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	7,000/-
10% Future Prospects	700/-
Sub Total	7,700/-
1/3rd deduction for self expenses	2,567/-
Monthly Dependency	5,133/-
Annual Dependency	61,596/-
Applying multiplier of '9'	**5,54,364/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**40,000/-**
Grand Total	**6,24,364/-**

The award dated 16.11.2016 is modified to the extent that amount of ₹8,78,872/- awarded by the Tribunal is reduced to ₹6,24,364/-.

While issuing notice of motion in the appeal on 15.02.2017, disbursement of compensation beyond ₹6,50,000/- was stayed.

The claimants shall be entitled to the balance amount alongwith interest as awarded by the Tribunal, 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

April 11, 2019

pankaj baweja

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