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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.2828 of 2015
Date of Decision: 07.01.2019

Smt. Prakash and another

Appellants

Versus

Satbir and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. M.S. Dhaliwal, Advocate
for the appellants.

Mr. M.B. Jain, Advocate and
Mr. Punit Jain, Advocate
for the Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 17.05.2013 passed by the Motor Accident Claims Tribunal, Rohtak [hereinafter referred to as 'the Tribunal'] has been assailed by the parents of Mahboob Singh seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver of truck bearing registration No. HR-63-0982 [hereinafter referred to as 'offending vehicle'], owner and insurer (i.e. Shri Ram General Insurance Company Ltd.) of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts of the case are that on 26.02.2010, Mahboob Singh alongwith Yogesh was going from Sampla to Rohtak on motor cycle bearing registration No. DL-4SBC-5796. On their way, the motor cycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Mahboob Singh sustained grievous injuries and died on the way to PGIMS Rohtak. FIR was registered.

A claim petition under Section 166 of Act was filed and it was claimed that the deceased was a brilliant and meritorious student of Civil Engineering and he was earning ₹6,000/- per month by giving tuitions. The claimants were able to substantiate the fact that the deceased was a student in Shri Bala Ji Institute of Engineering and Technology Sampla (Rohtak). The certificate issued by the Institute was produced as Ex.P3. He was a student of sixth semester in Three Years Diploma Course. No evidence was adduced to prove the fact that the deceased was earning ₹6,000/- per month by giving tuitions. The age of the deceased was pleaded as 21 years.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident occurred 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. The Tribunal assessed monthly income of the deceased as ₹4,500/- equating him to be an unskilled labourer; multiplier of '9' was applied considering the age of the parents of the deceased and ½ deduction for self-expenses was made. The Tribunal awarded a sum of ₹2,58,000/- alongwith interest @ 6% per annum. The amount awarded included ₹5,000/- for transportation of body and ₹10,000/- for funeral expenses.

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

Learned counsel for the appellants contends that the Tribunal erred in equating the deceased with an unskilled labourer inspite of the fact that he was student of sixth semester of Three Years Diploma Course. He submits that the deceased should have been treated as a skilled labourer. His grievance is that the future prospects have not been award. He further argues that the Tribunal erred in applying the multiplier considering the age of the parents. Further the grievance is that the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the Insurer argues that the appellants failed to substantiate monthly income of the deceased. The award was defended and any further enhancement was resisted.

There is no dispute between the parties with regard to the age of the deceased at the time of accident; the fact that he was a student of Diploma Course in Civil Engineering and that the deceased was unmarried at the time of accident.

As the deceased was pursuing Diploma in Engineering and was a student of sixth semester, thus, it would not be appropriate to assess the monthly earning as that of an unskilled labourer.

Keeping in view the age of the deceased and field of studies he was pursuing, it would be appropriate that he is considered to be a skilled labourer. In case where the claimants failed to substantiate the earning of the deceased, the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. In the State of Haryana, minimum wages for skilled labourer at the time of accident were ₹4,864/-. For calculation purpose, the same are rounded off to ₹5,000/- per month.

In view of decisions 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***, 40% future prospects are awarded. The claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate.

The Tribunal erred in applying the multiplier considering the age of the parents of the deceased. The multiplier is to be applied considering the age of the deceased at the time of accident. The deceased was 21 years old at the time of accident. Keeping in view the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***, multiplier of '18' is to be applied.

The issue with regard to multiplier to be applied considering the age of the deceased is no longer *res-integra*. The

Supreme Court in the case of ***<u>Sube Singh and another vs. Shyam Singh (Dead) and others; 2018 (3) SCC 18</u>*** has held as under:

> *"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."*

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased	5,000/-
40% Future Prospects	2,000/-
Sub Total	7,000/-
½ deduction for self expenses	3,500/-
Monthly Dependency	3,500/-
Annual Dependency	42,000/-
Applying multiplier of 18	**7,56,000/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**7,86,000/-**

The award dated 17.05.2013 is modified to the extent that amount of ₹2,58,000/- awarded by the Tribunal is enhanced to

₹7,86,000/-.

The claimants shall be entitled to enhanced amount alongwith interest as awarded by the Tribunal, from the date of filing the claim petition till the realization of the amount.

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

January 07th, 2019
pankaj baweja

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