IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 407 of 2017
Date of decision: 30.4.2019

Sushila and others

.. Appellants

v.

Sahid and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Birjender Singh, Advocate for
Mr. Ashish Gupta, Advocate for the appellants.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 30.1.2016 passed by the Motor Accident Claims Tribunal, Mewat (for short, 'the Tribunal') has been assailed by the legal representatives of Vijay Kumar seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The respondents are the driver of vehicle bearing registration No. HR-55J-2864 (hereinafter referred to as 'the offending vehicle'), owner and the insurer i.e. ICICI Lombard General Insurance Company Limited of the offending vehicle.

The facts necessary for adjudication of the present appeal are that on 23.3.2013, Vijay Kumar was travelling in his car bearing registration No. HR-26-V-9801. On the way, his car was struck by the offending vehicle. As a result of the impact, he received serious injuries and succumbed to the injuries during treatment. FIR No. 186 dated 24.3.2013 was registered.

In the claim petition filed, it was pleaded that the deceased was 40 years of age and was a medical practitioner. His earning was claimed as ₹20,000/- per month. The claimants failed to prove the monthly earning of the deceased but considering that the deceased had completed 18 months of community Medical service and essential drug of WHO Primary Health Care of the Session from January, 2005 to July, 2006 at Luxmi Paramedical Institute, Sohna, the Tribunal considering him to be a skilled labourer assessed the monthly earning as ₹6,000/-. 30% future prospects were awarded, 1/4th deduction for self-expenses was made as the deceased was survived by four dependents and multiplier of 15 was applied in consonance with the decision of the Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 21.** The Tribunal awarded a sum of ₹11,78,000/- along with interest @ 7.5% per annum. The amount awarded included ₹1,00,000/- for loss of consortium and for loss of love and affection to the children of the deceased and ₹25,000/- for funeral expenses.

The Tribunal 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. It was held that the driver of the offending vehicle was not holding a valid driving licence on the date of accident. As a result, the insurer was held liable to pay the compensation to the claimants but was given rights to recover the compensation from the driver and owner of the offending vehicle.

Learned counsel for the appellants argues that no amount has been awarded for loss of estate.

The contention raised by learned counsel for the appellants deserves rejection.

In view of the decision of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157**, the claimants are entitled to ₹70,000/- under conventional heads i.e. ₹40,000/- for loss of consortium and ₹15,000/- each for funeral expenses and for loss of estate and no amount is to be awarded for loss of love and affection, whereas in the present case a sum of ₹1,25,000/- has already been awarded under various heads including loss of love and affection.

The Supreme Court in **D. M., Oriental Insurance Co. Ltd. v. Swapna Nayak, AIR 2017 SC 692** held that where compensation under one head is just and nothing has been awarded in another and eventual figure appears just and proper, it would not be proper to interfere in such award. The relevant para is reproduced below:

> "When we find that under one head, reasonable amount has been awarded and under another head, nothing has been awarded though it should have been so awarded and at the same time, we notice that eventual figure of the award of compensation payable to the claimants appears to be just and reasonable then in such eventuality, we do not consider it proper to interfere in such award and in our appellate jurisdiction under Article 136 of the Constitution. In other words, if by applying the tests and guidelines, we find that overall award of compensation is just and fair, then, in our view, such award deserves to be upheld in claimants' favour. We find it to be so in the facts

of this case having taken note of all relevant facts and circumstances of the case."

There is another aspect of the matter. The deceased was 40 years of age at the time of accident and fell in the age group of 40 to 50 years. Having due regard to the decisions of the Supreme Court in **Pranay Sethi's case (supra)** and **Hem Raj v. Oriental Insurance Company Ltd., 2018(2) PLR 480,** 25% future prospects should have been awarded, whereas in the present case 30% future prospects have been awarded.

There is no scope for enhancement in compensation.

The appeal is dismissed. Since the appeal has been decided on merits itself, the question of limitation is left open.

(AVNEESH JHINGAN)
JUDGE

30.4.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No