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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

<u>Date of Decision : 14.03.2019</u>

1. <u>FAO-7894-2017 (O&M)</u>

Mukesh Kumar and another ...Appellants

vs.

Santi Kumar and others ...Respondents

2. <u>FAO-679-2018(O&M)</u>

Kusum Lata and others ...Appellants

vs.

Shunty Kumar and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amandeep Vashisht, Advocate
for the appellants in FAO-7894-2017.

Mr. Inderjeet Singh, Advocate
for the appellants in FAO-679-2018.

Mr. Yogesh Gupta, Advocate
for respondent-Insurance Company.
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<u>Avneesh Jhingan, J. *(Oral)*</u>

This order shall dispose of above mentioned two appeals. Both the appeals are arising out of the common award, hence, these are being decided by one order.

The award dated 01.05.2017 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'the Tribunal') in MACP case No. 103/2015 and 146/2015 has been assailed by the legal heirs of Dheeraj and Chanchal respectively, seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The driver-cum-owner/superdar, registered owner, of the car bearing registration No. HR-41D-8944 (hereinafter referred to as 'the offending vehicle') and insurer (i.e. IFFCO TOKIO General Insurance Company Ltd.) have been arrayed as respondents in the appeal.

The bare facts necessary for adjudication of both the appeals are that on 17.01.2015, Chanchal Sharma and Dheeraj were going on motorcycle bearing registration No. HR-71-0870. The motorcycle was being driven by Chanchal Sharma. When they reached near gate of Ganpati College, Bilaspur, the motorcycle was struck by the offending vehicle. Due to the impact, both the riders of the motorcycle fell down and suffered injuries. They were taken to Community Health Centre, Bilaspur where they were declared 'brought dead'. FIR No. 11 dated 18.01.2015 was registered at Police Station, Bilaspur.

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 the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

FAO-679-2018:

A claim petition was filed by the parents and minor sister of the deceased. It was pleaded that Dheeraj (deceased) was 19 years old and was a student of 10th Class and nothing was pleaded regarding the occupation and earning of the deceased. There is nothing on record to show that he was a class 10th student. The Tribunal assessed his notional annual income as ₹ 30,000/-. The Tribunal applied multiplier of '15' considering the age of the mother of the deceased. The Tribunal awarded a sum of ₹ 50,000/- under conventional heads. The Tribunal awarded a sum of ₹ 5,00,000/- along with interest @ 7.5% per annum.

Learned counsel for the appellants argues that the income assessed by the Tribunal is on lower side and it is even less than the minimum wages prevalent in the State for an unskilled Labourer at the relevant time. It is further argued that the Tribunal erred in applying multiplier of '15' by relying upon the age of the mother of deceased. The grievance is that no future prospects has been awarded.

Learned counsel for the Insurer contends that the deceased was only a student and he was not earning anything. He further argues that no deduction for self expenses has been made and the amounts awarded under the conventional heads are on the higher side.

The Supreme Court in ***M.R.Krishna Murthi Versus New India Assurance Co. Ltd., Civil Appeal Nos. 2476-2477 of 2019 decided on 05.03.2019,*** has held as under:-

> *"23. From the conjoint reading of the aforesaid judgments, inter alia, following principles can be culled out which would be relevant for deciding the instant appeal:*
>
> *(i) In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the poseer would be: what would have been his income had he joined a service commensurating with the said course. That*

can be the future earning.

(ii)There may be cases where the victim is not, at that stage, doing any such course to get a particular job. He or she may be studying in a school. In such a case, future career would depend upon multiple factors like the family background, choice/interest of the complainant to pursue a particular career, facilities available to him/her for adopting such a career, the favourable surrounding circumstances to see which would have enabled the claimant to successfully pick up the said career etc.

If the chosen field is employment, then the future earning can be taken on the basis of salary and allowances which are payable for such calling. In case, career is a particular profession, the future earning would depend on host of other factors on the basis of which chances to achieve success in such a profession can be ascertained.

(iii)There may be cases like DeoPatodi where even a student, the claimant would have made earnings on part-time basis or would have received offer for a particular job. In such cases, these factors would also assume relevance.

(iv)*After ascertaining the likely earning of the victim in the aforesaid manner, the nature of injuries and disability suffered as a result thereof would be kept in mind while determining as to how much earning has been affected thereby. Here, impact of injuries on functional disability is to be seen. In case of death of victim, it would result in total loss of earning. In the case of injuries, the nature of disability becomes important. Such an exercise was undertaken in N. Manjegowda case."*

The claimants failed to prove the occupation and earning of the deceased, it was pleaded that he was studying in Class X. In such circumstances, one of the aspect to be considered is the minimum wages prevalent in the State at the time of accident. Having clue from the minimum wages prevalent in the State at the time of accident, monthly income of the deceased is assessed as ₹6,000/-.

Having due regard to the 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.

In consonance with the decision of the Supreme Court in ***Sarla Verma's case (supra)***, ½ deduction for self-expenses is made as the deceased was unmarried.

The Tribunal erred in applying multiplier of '15' considering the age of the mother of the deceased. As the deceased 19 years old, multiplier of 18 is to be applied.

The issue regarding applying multiplier by considering the age of the deceased and not of the claimants, is no longer *res-integra*. The Supreme Court in the case of ***Sube Singh and another vs. Shyam Singh (Dead) and others; (2018) 3 SCC 18*** 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."*

As the quantum of compensation is being re-visited, the amounts under the conventional heads are awarded as per the decision of the Supreme Court in ***Pranay Sethi's case (supra).*** Claimants are entitled to ₹ 15,000/- each for funeral expenses and for loss of estate.

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased as assessed	6,000/-
40 % Future Prospects	2,400/-
½ deduction for self expenses	4,200/-
Applying multiplier of '18'	**09,07,200/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**9,37,200/-**

The award is modified to the extent that the amount of ₹5,00,000/- awarded by the Tribunal is enhanced to ₹9,37,200/-. The claimants shall be entitled to enhanced amount along with interest as awarded by the Tribunal.

<u>FAO-7894-2017:</u>

The claim petition was filed by the parents of Chanchal Sharma. It was pleaded that the deceased was 25 years of age at the time of accident and was working in M/s India Yamaha Motor Private Limited, Faridabad as trainee and was earning ₹ 8,508/- which included conveyance allowance. The earning of the deceased was proved and Tribunal awarded a sum of ₹ 5,29,028/- alongwith the interest of 7.5%.

The Tribunal assessed the compensation by considering the monthly income of the deceased as ₹ 7,658/-, ½ deduction for self-expenses was made and multiplier of '11' was applied considering the age of the mother of the deceased. ₹25,000/- each was awarded for funeral expenses and loss of estate.

Learned counsel for the appellants contends that no amount has been awarded for future prospects and Tribunal erred in applying multiplier of '11' by considering the age of mother of the deceased.

Learned counsel for the Insurer contends that the amounts awarded under the conventional heads are on higher side.

Having due regard to the decisions of the Supreme Court in ***Pranay Sethi's case (supra)*** and ***Hem Raj's case (supra)*** and the fact that the deceased was below 40 years and would come in the category of self-employed or having fixed wages, 40% future prospects are awarded.

In consonance with the decision of the Supreme Court in ***Sarla Verma's case (Supra),*** ½ deduction for self-expenses is made as the deceased was unmarried.

The Tribunal erred in applying multiplier of '11' considering the age of the mother of the deceased instead of applying multiplier of '18' as per age of the deceased. In view of decision of the Supreme Court in ***Sube Singh's (case)*** supra, multiplier of '18' is applied.

From the document produced by the learned counsel for the appellants, it is evident that the deceased was 25 years old at the time of accident. Secondary School Examination Certificate was exhibited as P5 and date of birth was 24.05.1990, the multiplier of '18' is applied.

As per the the decision of the Supreme Court in ***Pranay Sethi's case (supra),*** the claimants are entitled to ₹ 15,000/- each for funeral expenses and for loss of estate.

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased as assessed	7,658/-
40 % Future Prospects	3063/-
Sub Total	10,721/-
½ deduction for self expenses	**5,360**/-
Applying multiplier of '18'	**11, 57, 760/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**11,87,760/-**

The award is modified to the extent that the amount of ₹5,29,028/- awarded by the Tribunal is enhanced to ₹11,87,760/- along with interest as awarded by the Tribunal.

Both the appeals are allowed in the above said terms.

14th March, 2019 **(AVNEESH JHINGAN)**
shabha **JUDGE**

Whether speaking/reasoned *Yes*
Whether reportable *Yes*