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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.5822 of 2017
Date of Decision : 22.04.2019

Virender Singh and another

Appellants

Versus

Harmira Ram and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gulshan Nandwani, Advocate
for the appellants.

Mr. Deepak Suri, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral)

The unfortunate parents who lost their young daughter Pooja, aged 17 years in a motor vehicular accident are in appeal against award dated 01.03.2017 passed by the Motor Accident Claims Tribunal, Rewari [for brevity 'the Tribunal'] seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver, owner and insurer (i.e. National Insurance Company Ltd.) of Dumper bearing registration No. RJ-14GE-6606 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 27.08.2014, Pooja was coming home after attending her school. When she reached on the footpath of the railway over bridge, the offending vehicle came at a high speed and hit Pooja, she died at the spot. FIR No.165, dated 27.08.2014 was registered at Police Station Kosli.

A claim petition under Section 166 of the Act was filed by parents of the deceased. 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 driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹3,35,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹50,000/- each awarded to the claimants on account of loss of love and affection and ₹25,000/- towards transportation and last rites.

The deceased was 17 years of age at the time of accident. The Tribunal assessed her notional income as ₹15,000/- per annum and multiplier of '14' was applied considering the average age of the parents.

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

Learned counsel for the appellants contends that the Tribunal erred in assessing notional income of the deceased as ₹15,000/- per annum. Her mother deposed that the deceased was a student of 10+2 and had bright future ahead. It is argued that the Tribunal erred in applying multiplier considering the average age of the parents. He further contends that the amount awarded under the conventional heads are on the lower side.

Learned counsel for the insurer while defending the award argues that the claimants failed to produce any cogent evidence regarding occupation and earning of the deceased. He argues that deduction for self-expenses has to be made while awarding the compensation.

The deceased was a student of 10+2. The said contention is fortified from the fact that she was coming back from school at the time of accident. In cases where there is a death of student, it is difficult to assess monthly earning of the deceased, as it is impossible to predict that what the future held for her.

The Supreme Court in ***M. R. Krishna Murthi Versus New India Assurance Co. Ltd., (2019) 1 ACC 730,*** 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:*
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> *(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.

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."*

Taking into consideration various facts and in order to arrive at a just and equitable compensation, monthly earning of the deceased is assessed as ₹6,000/-.

As per decision 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. No amount is awarded for loss of love and affection.

Since the deceased was bachelor at the time of accident, ½ deduction for self-expenses 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.***

The Tribunal erred in applying multiplier considering the average age of the parents instead of taking the age of the deceased for applying the multiplier. The deceased was 17 years old at the time of accident, multiplier of '18' is applied.

The multiplier is to be applied considering the age of deceased and not the age 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."

(*emphasis supplied)*

The Supreme Court in its recent decision in ***M/s. Royal Sundaram Alliance Insurance Company Ltd. v. Mandala Yadagari Goud and others, Civil Appeal No. 6600 of 2015. D/d. 9.4.2019*** has reiterated this fact and held as under:-

"9. The focus for determination of such claim is the deceased and what would be his contribution towards the dependents would he to be alive, for the benefits of the dependents. It is trite to say, and in fact conceded by the learned counsel for the insurance company, that in case the deceased is a married person, it is the age of the deceased which is to be taken into account. The question is whether in case the deceased is a bachelor, a different principle for calculation of the multiplier should be applied by shifting the focus to the age of the claimants? We are of the view that the answer to this question should be in the negative.

10. We may also note the importance of applying uniform settled principle to such cases. Certainty of law is important. Once the law is settled, it should not be repeatedly changed as *that itself causes confusion and litigation. It is with this objection that this Court has endeavoured to settle legal principles in respect of the matter in question.*

11. A reading of the judgment in Sube Singh (supra) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on : (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf.

12. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.

13. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

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/-
Sub Total	8,400/-
½ deduction for self expenses	4,200/-
Monthly Dependency	4,200/-
Annual Dependency	50,400/-
Applying multiplier of '18'	**9,07,200/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**9,37,200/-**

The award dated 01.03.2017 is modified to the extent that amount of ₹3,35,000/- awarded by the Tribunal is enhanced to ₹9,37,200/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum 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 22, 2019

pankaj baweja

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