226

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

FAO No.10641 of 2018 (O&M)
Date of Decision: 24.05.2019

Prem Lata and another

Appellants

Versus

Paramjit Singh Sodhi and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Ekta Thakur, Advocate for the appellants.

****

AVNEESH JHINGAN, J (Oral):

Aggrieved of award dated 10.08.2018 passed by the Motor Accident Claims Tribunal, Chandigarh [for brevity 'the Tribunal'], the wife and son of Vijay Kumar Verma (deceased) have filed an appeal under Section 173 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] seeking enhancement of compensation awarded under Section 166 of the Act.

The driver-cum-owner and insurer (i.e. Bajaj Alliance General Insurance Company Ltd.) of Car bearing registration No.PB-65V-0203 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 and 2 respectively in the appeal.

The facts necessary for adjudication of the present appeal are that on 18.12.2017, Vijay Kumar Verma was plying his cycle. When he reached near Taxi Stand, Phase IX, Mohali, he was struck by the offending vehicle. As a result of the impact, he received grievous injuries, which proved fatal. FIR No.113, dated 19.12.2017 was registered at Police Station Phase-8, SAS Nagar, Mohali.

The Tribunal after considering the facts and appreciating the evidence adduced opined that accident was the result of rash and negligent driving of the offending vehicle. The driver-cum-owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

In the claim proceedings, age of the deceased was taken as 54 years. The claimants pleaded that he was working with Amartex, Chandigarh and also with Fair Deal, Mohali and was getting salary of ₹10,000/- per month and ₹4,000/- for over time. To prove the income, B. Soman, Accountant with Amartex Fabrics and Dry Cleaners deposed before the Tribunal. He brought the service record, attendance register and copy of register of employees. He stated that the deceased joined the firm on monthly salary of ₹7,000/- which was increased to ₹8,500/- and thereafter to ₹9,500/-. In September 2017, it was increased to ₹10,000/-. Considering that payment of over time is not regular payment and cannot be considered for assessing the income, the Tribunal assessed the monthly earning of the deceased as ₹10,000/-; 10% future prospects were awarded in consonance with 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;*** 1/3rd deduction for self-expenses was made and multiplier of '11' was applied as per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.*** The Tribunal awarded a sum of ₹10,38,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹70,000/- under the conventional heads.

Heard learned counsel for the appellant and perused the record produced.

The only grievance raised by learned counsel for the appellant is that payment for overtime has not been considered while granting compensation.

The deceased joined the firm at salary of ₹7,000/- per month. His monthly wages were increased to ₹8,500/- in April 2016. Thereafter, in June, 2017 it increased to ₹9,500/- per month. Meaning thereby, wages were being increased after a year whereas last increase was given after three months from ₹9,500/- to ₹10,000/- per month. The Tribunal though felt that there is exaggeration in the salary claimed but relying upon the evidence, assessed monthly earning as ₹10,000/-.

The contention raised by learned counsel for the appellant lacks merit. From perusal of the salary register, it is clear that deceased was paid ₹10,000/- for the month of October, 2017. No proof regarding salary of November, 2017 was produced. There is nothing on record to show that he was regularly working over time and was being paid ₹4,000/- for over time. Rather, from the attendance register Ex.P-6, it is clear that for the entire month, there was not even a single over time done by him. His total working hours were consistently 8 hours.

In absence of any proof to show that deceased was getting payment for over time much less regularly, no case is made out for interference in income assessed by the Tribunal.

The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

May 24, 2019
pankaj baweja

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