IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO- 15884-2018 (O&M)
Date of Decision: December 10, 2019

Reeta Rani and others

Appellants

Versus

Nazim and others

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sanjay Verma, Advocate
for the appellants.

Ms. Swati Batra, Advocate
for respondent No.-3- Insurance company.

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<u>JAISHREE THAKUR, J.</u> <u>(Oral)</u>

1. This appeal has been filed seeking to challenge the award of the Motor Accident Claims Tribunal, Jagadhri on the ground that inadequate compensation has been allowed by the Tribunal, which is not in consonance with the judgment rendered by the Constitutional Bench in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009.***

2. In brief the facts are that on 15.11.2016 at about 4.00 p.m. Deepak Kumar who was riding his motor cycle bearing registration No. HR-02-AH-9385 was hit by a JCB bearing no. HR-99-ZB-9069, which was being driven by respondent No.1 in a rash and negligent manner. Due to the impact, Deepak

Kumar fell down and sustained multiple grievous injuries on his vital parts. Sanjay Kumar, the eye-witness took Deepak Kumar to the hospital where the doctors declared him brought dead. On account of the accident that took place, a claim petition was filed by the widow and the minor children of the deceased stating that the deceased was 28 years of age and was earning more than ₹70,000/- per month from agricultural land being cultivated by him, while also stating that he was running a milk dairy.

3. The claim petition was contested by both respondents No. 1 and 2, namely the owner and the driver of the offending vehicle pleading that no accident took place, whereas the Insurance company also denied the factum of the accident stating that a false and fabricated case had been registered in connivance with the claimants only to extract compensation. However, on perusing the evidence led and adverting to the statement of the eye-witness-Sanjay Kumar, the Tribunal held that the JCB was being driven in a rash and negligent manner by respondent No.1 who hit into the motor-cycle of the deceased. It was also noted that an FIR had been registered which finds the mention of the number of the offending vehicle while also taking note of the fact that respondent No.1, who after thorough investigation had been arrested. The claim petition was allowed and compensation was assessed by taking the income of the deceased to be that of a daily-wager. The claimants had claimed that the deceased was earning ₹70,000/- per month from the agricultural land and the dairy business, however, since no evidence had been adduced to reflect his actual income, the claim that he was earning ₹ 70,000/- was dismissed. The Tribunal also relied upon the copies of the Jamabandi placed on the record as Ex. P-12, P-13 and P-14 which did not reflect that any land stood in the name

of the deceased. The Tribunal also came to the conclusion that there was no document or any evidence on the record to show that the deceased was cultivating his fields as well as the fields of other farmers while also going through the registration certificate of the tractor which was allegedly used by the deceased to cultivate the fields and found that the said document did not reflect that the tractor was owned by the deceased. Consequently, by applying a multiplier of 17 to the monthly income of the deceased and allowing deductions of 1/4th towards personal expenses, the Tribunal allowed an amount of ₹12,34,812/- towards compensation and further allowed a sum of ₹70,000/- towards conventional heads. Aggrieved against this compensation, the present appeal has been filed.

4. I have heard learned counsel for the parties and gone through the pleadings of the case.

5. It would be the case of the appellant that the income of the deceased has not been correctly assessed, as a categoric statement had been made that the deceased is earning approximately ₹70,000/- per month by running a milk dairy and cultivating fields of others. However, this Court is not inclined to take into consideration this argument since there is no evidence on the record to establish that the deceased was doing the business of a milk dairy or was cultivating the fields of others. Therefore, in the opinion of the Court, the Tribunal has correctly assessed the compensation based on the minimum wages applicable for the month of November, 2016, the month when the accident took place. However the compensation is to be re-assessed in terms of the judgment as rendered in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009,*** wherein the income of the

deceased would attract 40% increase towards future prospects which has admittedly not been allowed by the Tribunal. Consequently, the compensation payable is re-worked and tabulated as under:-

Sr. No.	**Heads of claim**	***Calculation***
1	Name of the deceased	Deepak Kumar
2	Date of accident	15.11.2016
3	Age of the deceased	25 years
4	Monthly income of the deceased	8070/- per month
5	40% of (iv) is to be added towards future prospects	(8070+3228) =11298/-
6	1/4th of (v) above deducted towards personal expenses	(11298-2825) =8473/-
7	Compensation calculated after applying the multiplier of 17	8473x12x17= 17,28,492/-
8	Conventional heads	70,000/-
9	Total : (7+8)	17,98,492/-

As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable is assessed at **₹17,98,492/-.** The amount in excess over and above what was awarded will also attract interest @7.5% per annum from the date of filing of the appeal in this Court till the date of actual disbursement of payment.

(JAISHREE THAKUR)
JUDGE

December 10, 2019
seema

Whether speaking/reasoned Yes
Whether reportable Yes/No