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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

****

FAO No.356 of 2018 (O&M)
Date of Decision: 29.05.2019

Veer Bhan and others

Appellants

Versus

Deepak and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ketan Antil, Advocate
for the appellants.

Mr. Gopal Mittal, Advocate
for respondent No.2.

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AVNEESH JHINGAN, J (Oral):

The award dated 08.03.2017 passed by the Motor Accident Claims Tribunal, Sonipat [for brevity 'the Tribunal'] has been assailed by parents and sister of Aryavart (deceased) [mentioned as 'Satyavart' at some places in the award] seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver-cum-owner and insurer (i.e. National Insurance Company Ltd.) of Motorcycle bearing registration No. HR-79-5593 [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 appal are that on 26.04.2016, Aryavart alongwith his sister was going on motorcycle bearing registration No. HR-11D-1096 [hereinafter referred to as 'motorcycle']. When they reached near Hanuman Mandir and Gaushala of village Bali Brahmnan, the motorcycle was struck by the offending vehicle. As a result of the impact, Aryavart sustained injuries, on the way to the hospital, he succumbed to the injuries. FIR No.139, dated 26.04.2016 was registered at Police Station Gohana, Sonipat.

In the claim petition, it was pleaded that the deceased was 18 years old and was student of 10+2. It was claimed that he was giving tuitions and was earning ₹15,000/- per month. The claimants failed to prove earning of the deceased, the Tribunal assessed ₹40,000/- as annual notional income of the deceased and applied multiplier of '18'. The Tribunal awarded sum of ₹8,95,000/- alongwith interest @ 9% per annum. The amount awarded included ₹75,000/- for future prospects, ₹75,000 for pain and suffering and ₹25,000/- for funeral expenses.

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

Heard learned counsel for the parties and perused the record produced by them.

Learned counsel for the appellants contends that the deceased was a student of 10+2 and was 18 years old, the Tribunal erred in assessing annual notional income as ₹40,000/-. He submits that future prospects awarded are on the lower side. His grievance is that no amount is awarded for loss of estate.

Learned counsel for the insurer argues that the deceased was only a student, the claimants failed to prove earning of the deceased. He submits that no deduction for self-expenses were made. He further argues that no amount be awarded for pain and suffering and amounts under the conventional heads be awarded as per decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.***

In the motor vehicular accident cases, the courts are duty bound to award just and equitable compensation. This duty becomes more onerous in cases where the deceased is a student, as it is impossible to predict that what the future held for the deceased. In the present case the deceased was 18 years old student of 10+2, in such circumstances it would not be appropriate to equate him with an unskilled labourer.

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.*

(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."*

Taking into consideration the facts in totality and having a clue from the minimum wages prevalent in the State at relevant time, income of the deceased is assessed as ₹9,700/- per month.

As per decision of the Supreme Court in ***Pranay Sethi's case*** (supra) and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** 40% future prospects are awarded. The claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate. No amount is awarded for pain and suffering.

As the quantum of compensation is being revisited, it would be appropriate that ½ deduction for self-expenses be made as per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***, as the deceased was bachelor.

There is no dispute regarding age of the deceased and multiplier applied.

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	9,700/-
40% Future Prospects	3,880/-
Sub Total	13,580/-
½ deduction for self expenses	6,790/-
Monthly Dependency	6,790/-
Annual Dependency	81,480/-
Applying multiplier of '18'	**14,66,640/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**14,96,640/-**

The award dated 08.03.2017 is modified to the extent that amount of ₹8,95,000/- awarded by the Tribunal is enhanced to ₹14,96,640/-.

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

May 29, 2019
pankaj baweja

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