**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-6290-2013
Date of decision : 10.05.2022

Nirmala and others ..... Appellants

versus

Prem Chand and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Mukesh Yadav, Advocate
for the appellants.

None for respondent No.1.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3-Insurance Company.

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PANKAJ JAIN, J.

Claimants are in appeal seeking modification of the award dated 07.05.2013 passed by learned Motor Accidents Claim Tribunal, Narnaul (hereinafter referred to as 'Tribunal') in MACT case No.290 of 2012, whereby they have been awarded an amount of Rs.5,98,200/- on account of death of Kanshi Ram in a motor vehicular accident dated 10.11.2012.

2. As per the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as '1988 Act') on 10.11.2012 at about 8.30/9.00 p.m., Kanshi Ram-the deceased and his brother Mahender Singh were going to their fields, when a jeep bearing registration No.RJ-02C-1682 being driven by respondent No.1-Prem Chand at a fast speed with rash, negligent and zig-zag manner came from village Thanwas side struck against Kanshi Ram-the deceased. As per claimants, the accident had been caused by respondent No.1 due to his rash and negligent driving. A criminal case bearing FIR No.332

dated 05.12.2012, under Sections 279/304-A IPC was registered in this regard at Police Station Station, Nangal Chaudhary.

3. The claim petition was contested by respondent No.1 by filing written statement. Respondent No.2 failed to appear before the Tribunal despite service, hence was proceeded against ex-parte. Separate written statement was filed by respondent No.3-Insurance Company.

4. On the basis of the pleadings, the learned MACT framed the following issues:-

> "1. Whether Kanshi Ram son of Shanta Ram had died in a road accident which took place on 10.11.2012 in the area of village Thanwas (Police Station, Nangal Chaudhary) due to rash and negligent driving on the part of respondent No.1, the driver of jeep bearing No.RJ-2-C-1682? OPP
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> 2. Whether the claimants are entitled to compensation, if so to what amount and from whom? OPP
>
> 3. Whether respondent no.1 did not hold a valid and effective driving licence, if so to what effect? OPR-3
>
> 4. Relief.

5. Grievance of the claimants/appellants relates to issue No.2. Counsel for the appellants submits that the deceased was an agriculturist being share holder in land measuring 22 kanal 16 marlas, the Tribunal erred in assessing the income of the deceased by deeming him to be a labourer. Thus, he seeks enhancement under the heads of income of the deceased which has been taken to be Rs.4,200/- per month. Counsel further submits that the deceased was 38 years of age, yet no future prospects has been awarded. He claims enhancement under the conventional heads as per law laid down in **National Insurance Company Limited vs. Pranay Sethi and others 2017 (16) SCC 680.**

6. Counsel for respondent No.3-insurance company submits that there is no evidence on record with respect to the income of the deceased, thus, the same has been rightly assessed by the Tribunal. He is not in a position to deny the fact that future prospects and compensation under the conventional heads needs to be enhanced as per law laid down in Pranay Sethi's case (supra).

7. I have heard counsel for the parties and have gone through the records of the case.

8. It is not disputed that the fact regarding the deceased being an agriculturist holding share in land measuring 22 kanal 16 marlas has been proved on record vide Ex.P-5 i.e. jamabandi for the year 2007-08 which carries presumption of truth being 'record of rights'. An agriculturist cannot be compared to an unskilled labour and thus, his income cannot be assessed equivalent thereto, though it may serve as one of the parameters to ascertain the income in the absence of cogent evidence.

9. In the considered opinion of this Court, the income of an agriculturist holding land has to be more than that of a skilled labour. Thus, applying guess work, the income of the deceased Kanshi Ram is assessed to be Rs.6,500/- per month. He was 38 years of age, thus, element of 40% on account of future prospects needs to be factored in. Deduction of $1/4^{th}$ has been rightly applied to calculate the loss of dependency. The multiplier of 15 has also been rightly calculated as per law laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121.**

10. Under the conventional heads also, the claimants are held entitled to enhance amount i.e. Rs.40,000/- each on account of loss of consortium, Rs.15,000/- on account of funeral expenses and Rs.15,000/- on account of loss of estate. An amount of Rs.11,200/- has been rightly awarded as

reimbursement for the medical expenses incurred on the deceased.

11. As a sequel of the discussion hereinabove, the appeal is allowed. The award of the Tribunal is modified. Compensation payable to the claimants shall be worked out as per the amounts modified herein above. Needless to say any amount already paid shall be set off and adjusted.

(PANKAJ JAIN)
JUDGE

10.05.2022
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No