IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

243

FAO-44-2016 (O&M)
Date of decision: 16.05.2022

Robina Khatoon and others .....Appellants

Versus

Balwinder Singh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Buta Singh Bairagi, Advocate
for the appellants.

Mr. S.K. Passi, Advocate
for respondents No.1 and 2.

Mr. Vinod Gupta, Advocate
for respondent No.3-insurance company.

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MANJARI NEHRU KAUL, J. (ORAL)

The instant appeal has been preferred by the appellants/claimants i.e. widow, two minor children and mother of deceased Mohammad Feroze @ Mohammad Feroze Alam against the award dated 25.05.2015, passed by the learned Motor Accident Claims Tribunal, Moga (hereinafter referred to as 'the Tribunal') in a claim petition filed under Section 166 read with Section 140-A of the Motor Vehicles Act, 1988, whereby, the following compensation was awarded to them:-

Sr. No.	Head	Amount
1.	Monthly income	Rs.5,000/-
2.	Future prospects (30%)	Rs.1,500/-
3.	Monthly income after adding future prospects	Rs.6,500/-
4.	Deductions towards personal expenses (1/3rd)	Rs.2,166/-
5.	Dependency	Rs.4,334/- (Rs.4,330/- rounded off)

6.	Annual dependency	Rs.51,960/-
7.	Dependency after applying multiplier of 16	Rs.8,31,360/-
8.	Funeral expenses	Rs.25,000/-
9.	Loss of love and affection	Rs.25,000/-
10.	Medical expenses	Rs.1,98,173/-
	Total Compensation	Rs.10,79,533/-

Respondent No.3-insurance company was held liable to pay the entire award amount to the appellants/claimants. Out of Rs.10,79,533/-, appellant/claimant No.1 widow of the deceased was held entitled to Rs.7,79,533/- whereas appellants/claimants No.2 and 3 i.e. minor children of the deceased were held entitled to Rs.1,00,000/- each and share of appellant/claimant No.4 i.e. mother of the deceased was assessed as Rs.1,00,000/-. The compensation amount was to carry interest @ 6% per annum, from the date of institution of the claim petition till the date of realization.

Brief facts as pleaded in the claim petition may be noticed as thus. On 11.08.2014 at about 10:00 P.M. when the deceased was pillion riding on a motorcycle with one Chetan, near Basti Telu Wali, one Mohindra Verito Car bearing registration No.PB-05Y-7117 came in a rash and negligent manner from the opposite side and collided with the motorcycle of the deceased. Resultantly, the deceased along with Chetan fell down on the road. The deceased sustained injuries on various parts of his body and succumbed to them lateron. The accident in question was witnessed by Sukhdeep Singh. FIR No.92 dated 13.08.2014 under Section 304A IPC was registered at Police Station Mallanwala against respondent No.1(driver of the offending vehicle) on the complaint of Sukhdeep Singh, the eye witness. On the basis of evidence led, the Tribunal awarded the compensation as detailed above.

Learned counsel for the appellants/claimants *inter alia* contends that it was a matter of record that the deceased was 24 years of age on the date of accident in question, but the Tribunal erred in taking his age to be 35 years on the basis of age of the deceased mentioned in the post-mortem report. Learned counsel submits that as per the voter card of the deceased which was exhibited before the Tribunal as Ex.P-25, the age of the deceased was clearly reflected as 24 years. He submits that the voter card of the deceased would have to be kept on a higher pedestal for determining the age of the deceased than the post-mortem report. Hence, in the circumstances, the correct multiplier after taking the age of the deceased to be 24 years on the date of accident would be '18'. He further submits that the Tribunal had failed to award any compensation with regard to the loss of future prospects and thus the claimants were also entitled to 40% on account of loss of future prospects. He also submits that since the claimants were four in number, deductions to the extent of 1/4th were also required to be done. He further submits that the appellants/claimant are also entitled to compensation for loss of spousal, parental and filial consortium respectively.

Per contra, learned counsel appearing for respondent No.3-insurance company while opposing the prayer and submissions made by the counsel opposite, submits that since the post-mortem report clearly mentioned the age of the deceased to be 35 years, the Tribunal had not erred in any manner whatsoever in applying the multiplier of '16'. He submits that no doubt the appellants/claimants are placing reliance upon the voter card of the deceased Ex.P-25, however, it cannot be believed that there would have been such a major discrepancy between the age of the deceased as on the one hand the post moretem report mentioned his age to be 35 years whereas the voter card showed him to be 24 years of age. He was, however, not able to controvert the submissions made by the counsel opposite that the appellants/claimants were entitled to compensation with respect to loss of spousal, parental and filial consortium as well as the fact that 40% of future prospects also required to be assessed and awarded to the claimants.

I have heard learned counsel for the parties and perused the relevant material on record.

The deceased as per the voter card Ex.P-25 was 24 years of age on the date of accident in question. He was working as a daily wager. It cannot be over-emphasized that the evidentiary value of a voter card for the purpose of determining the age of the deceased would be much higher than that of the post-mortem report as the former is issued by the authorities concerned on the basis of birth certificate/Aadhaar Card etc. On the other hand, post-mortem report cannot be said to be a conclusive proof of age of the deceased Mohd. Feroze, as at the time of admission of the deceased in the hospital after the accident in question, his age would have been noted on the basis of general guess work. This Court, therefore, has no hesitation in concluding that the age of the deceased would have to be taken as 24 years as per his date of birth mentioned in the voter card (Ex.P-25). Therefore, correct multiplier applicable in the case would be '18'. Since, the deceased was working as a daily wager, hence the appellants/claimants are also entitled to 40% towards future prospects as per the settled law laid down in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270; Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. : (2009) 6 SCC 121*** and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333***.

Further, the Hon'ble Supreme Court in ***Pranay Sethi's case*** *(supra)* has quantified the amount in the sum of Rs. 15,000/- each for loss of estate and funeral expenses in addition to Rs. 40,000/- each for loss of consortium. Still further, it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement *qua* the above-mentioned conventional heads, as was also re-assessed by the Hon'ble Supreme Court in ***Rasmita Biswal and others Vs. Divisional Manager, National Insurance Co. Ltd. and another : 2022(1) RCR(Civil) 344*** as per the ratio laid down in ***Pranay Sethi's case*** *(supra)*. Hence, the amount of compensation under the convention heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses. Besides this, the claimants, who are widow, two minor children and mother of the deceased, are entitled to Rs.44,000/- each, for loss of spousal, parental and filial consortium, respectively.

The compensation thus payable to the claimants would be as follows:-

Sr. No.	**Head**	**Amount**
1.	Monthly income	Rs.5,000/-

2.	Annual income	Rs.60,000/- (5000 x 12)
3.	Future prospects (40%)	Rs.24,000/- (60000 x 40%)
4.	Total annual income	Rs.84,000/- (60000+24000)
5.	Deduction (1/4th)	Rs.21,000/-
6.	Loss of annual future earnings	Rs.63,000/- (84000-21000)
7.	Multiplier	18
8.	Loss of future earnings	Rs.11,34,000/- (63000 x 18)
9.	Loss of consortium (spousal, parental and filial)	Rs.1,76,000/- (44000 x 4)
10.	Funeral expenses	Rs.16,500/-
11.	Loss of estate	Rs.16,500/-
12.	Medical expenses	Rs.1,98,173/-
	Total compensation	Rs.15,41,173/-

The claimants are, therefore, held entitled to a total sum of Rs.15,41,173/- as compensation along with interest @ 8% per annum from the date of filing of claim petition till its actual realization, in terms of the apportionment decided by the Tribunal.

With these modifications, the present appeal stands disposed of in the above terms.

16.05.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No