IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2293 of 2017 (O&M)

Date of Decision: 29.11.2022

Gajender and another .... Appellants

Versus

Jogender and others .... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. J. S.Hooda, Advocate for the appellants.

Mr, Harjinder Singh, Advocate for the respondent No.3/ Insurance Company.

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<u>HARKESH MANUJA, J.</u>

By way of present appeal, challenge has been made to an award dated 04.05.2016 passed by the Motor Accident Claims Tribunal, Palwal (hereinafter referred to as "the Tribunal), whereby, a sum of Rs.4,70,000/- along with interest @ 7.5% per annum has been awarded in favour of appellants-claimants.

In an unfortunate accident dated 06.06.2015 involving the offending vehicle i.e. Alto car bearing registration No.HR-30M-6690, Ramesh son of appellants lost his life.

Allegingrash and negligent driving on the part of respondent No.1 to be responsible for the aforesaid accident, claim petition was filed before the Tribunal at the instance of appellants- claimants being parents of the deceased, seeking compensation to the tune of Rs.40,00,000/- along with interest thereupon.

Learned Tribunal vide its Award dated 04.05.2016 recorded that accident in question took place on account of rash and negligent driving of offending vehicle being driven by respondent No.1, resulting into the death of Ramesh. Considering the age of the deceased to be 17 years 11 months and taking his notional income @ Rs.5,000/- per month by applying deduction of half, the notional dependency was assessed at Rs.30,000/- per annum.By applying the multiplier of 14, the total dependency was assessed at Rs. 4,20,000/-, besides awarding Rs.20,000/- as expenses of transportation and last rites and further Rs.30,000/- for loss of love and affection. Accordingly, a total of Rs.4,70,000/- was ordered to be awarded along with interest @7.5% per annum.

Challenging the aforesaid award with a prayer for seeking enhancement, it has been contended on behalf of appellants that considering the fact that deceased was 17 years 11 months as on the date of accident and was studying in 10th standard, besides helping his father as well, notional income of the deceased on monthly basis should have at least been assessed as those being granted to a semi- skilled worker as on the date of accident. Learned Counsel for the appellants also submits that in view of the law laid down by the Hon'ble Supreme Court in the case of **"National Insurance Company Ltd. Vs. Pranay Sethi",**reported as 2017(4)RCR (Civil) 1009, the appellants-claimants are also entitled for future prospects @ 40% besides applying multiplier of 18 instead of 14 for the purpose of determination of amount of compensation.Learned counsel also submits that based on the aforesaid judgment rendered by the Hon'ble Supreme Court, compensation awarded under the conventional heads is also required to be appropriately granted.

On the other hand, learned counsel for the respondent-Insurance Company submits that adequate compensation has already been awarded by the learned Tribunal by taking into account the notional income of deceased to be Rs.5,000/- per month and accordingly, impugned award warrants no interference.

I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of appellants. In the peculiar facts & circumstances of the present case, wherein the deceased was more than 17 years of age at the time of accident and also used to help his father in agricultural work as well as selling of vegetables and milk,in my considered opinion, learned Tribunal erred in assessing his notional income as Rs.5,000/- per month. Though, it cannot be ascertained what would have been the probable income of the deceased after he would have completed his education, however, it cannot be denied that deceased who was pursuing his matriculation, would have atleast earned an amount equal to minimum wages for an un-skilled worker applicable at that point of time. Since, minimum wages for un-skilled worker applicable in Haryana w.e.f. 06.06.2015 were Rs.5812/- per month, therefore, it would be appropriate in the facts and circumstances of the present case to consider notional income of the deceased as Rs. 6000/- per month.

Further, by applying principle of law laid down by Hon'ble the Supreme Court in **Pranay Sethi's**case(supra), as the age of deceased at the time of accident was 17 years 11 months, multiplier of

18 ought to have been applied instead of 14**.**So far as grant of future prospects are concerned, I am of the considered view that since deceased was a student of 10th class at the time of his accident and he would have definitely studied further and joined some profession, had he not died in the aforesaid accident, therefore, benefit of future prospects needs to be granted while determining the dependency. In this regard, reliance can also be placed on judgement of Hon'ble Supreme Court in the case of **"Rajendra Singh and Others Vs National Insurance Company Limited and Others"**, reported as 2020(3) RCR (Civil) 26, wherein Hon'ble apex court held that future prospects can be granted while ascertaining dependency of a child aged 12 years. Relevant para 12 of the above-mentioned judgment is reproduced hereunder:

> "12 ....This determination shall not depend upon financial position of the victim or the claimant but rather on the capacity and ability of the deceased to provide happiness in life to the claimants had she remained alive. The compensation is for loss of prospective happiness which the claimant would have enjoyed had the child not died at the tender age. Since the child was studying in a school and opportunities in life would undoubtedly abound for her as the years would have rolled by, compensation must also be granted with regard to future prospects. It can safely be presumed that education would have only led to her better growth and maturity with better prospects and a bright future for which compensation needs to be granted under non-pecuniary damages."

Thus, in view of the above discussion, since deceased was 17 years of age at the time of accident, appellants/ claimants are entitled for grant of benefit future prospects @ 40% while assessing the dependency.

Besides this, the claimants are entitled for Rs.16,500/- under the head of funeral expense (instead of Rs.20,000/-) and a further sum of Rs.16,500/- for loss of estate (not granted by learned Tribunal). Also, loss of filial consortium is to be awarded to the tune of Rs.88,000/- (44,000 X 2) as there are two dependents.

Besides it, compensation awarded under the head of 'loss of love and affection' is liable to be set aside in view of law laid down by the Hon'ble Supreme Court in case of "**Satinder Kaur @ Satwinder Kaur& Others. Versus United India Insurance Co. Ltd.**" reported as 2020(3) R.C.R Civil 75. Relevant Para 8 of abovementioned judgement is reproduced hereinafter:-

> *"The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head."*

No other argument has been raised. Thus, in view of the discussion made hereinabove, appellants/ claimants are entitled for the compensation, as detailed in the table given hereunder:-

Sr.No.	*Particulars*	*Amount (Rs.)*
1.	*Annual Income of deceased (Rs.6000x12)*	*Rs.72,000/-*
2.	*Add 40% of Future prospects*	*Rs.28,800/-*
3.	*Total Income*	*Rs.1,00,800/-*
4.	*Deduction (1/2nd)*	*Rs.50,400/-*
5.	*Multiplier of 18 as per age of 17 years (Rs.50,400x 18)*	*Rs.9,07,200/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium*	*Rs.88,000/-*
8.	*Loss of estate*	*Rs.16,500/-*
	Total Compensation	*Rs.10,28,200/-*
	Amount Awarded by the Tribunal	*Rs.4,70,000/-*
	Enhanced Amount	*Rs.5,58,200/-*

9. The grant of interest @ 7.5% per annum is not just in view of facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in **"Smt. Supe Dei and othersVs. National Insurance Company Limited and other"**, reported as 2009(4) SCC 513, approved in a subsequent judgment titled as **"Puttamma and others Vs. K.L.Narayana Reddy and another"**, reported as 2014 (1) RCR (Civil) 443, interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization.

10. The present appeal is partly allowed and partly dismissed in the manner, indicated hereinabove.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

November 29, 2022 **(HARKESH MANUJA)**
anil **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*