IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-234-2018 (O&M)

Reserved on: 11.10.2022

Pronounced on: October 19, 2022

Savitri Devi and another .... Appellants

Versus

Major Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Dheeraj Narula, Advocate for the appellants.
Mr. Vinod Gupta, Advocate
for respondent No.3-Insurance Company.

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HARKESH MANUJA, J.

By way of present appeal, the appellants have questioned the adequacy of compensation awarded by the learned Motor Accident Claims Tribunal, Sirsa, for short 'the Tribunal', vide its award dated 05.09.2017.

Brief facts of the case are that on 04.10.2016, Lal Chand (since deceased) along with others was going to Salasar on three different motorcycles. At about 4.00 PM when they reached ahead some distance from Malasar Toll Naka, Megha Highway Road, a Truck bearing registration No.PB-05-Y-9144, being driven by respondent No.1 in a rash and negligent manner, coming from wrong side, struck against the motorcycle of Lal Chand and Rakesh bearing registration No.HR-44-H-0244, as a result of which they fell down on the road and received multiple serious injuries. Rakesh died at the spot; whereas Lal Chand succumbed to his injuries in Hospital.

Respondent No.1 (Driver of the offending vehicle) fled away from the spot while leaving the truck. Regarding this accident, an FIR No. 287 dated 05.10.2016 under Sections 279, 304-A IPC was got registered at Police Station, Rattangarh.

The appellants being claimants and dependents upon the deceased- Lal Chand filed a claim petition before the learned Tribunal for grant of compensation to the tune of Rs.30 lacs, alleging rash and negligent driving of the offending vehicle by respondent No.1.

Learned Tribunal vide its impugned award dated 05.09.2017 allowed the claim petition holding respondent No.1 to be rash and negligent while driving the offending vehicle and determined the amount of compensation to the tune of Rs.7,37,000/- to be payable to the claimants along with interest @ 9% from the date of filing of the claim petition till its realization. The learned Tribunal while determining the amount of compensation applied the multiplier of '17', and salary of the deceased was taken to be Rs.6,000/- per month as unskilled laborer. A deduction of 1/2 was made towards the personal expenses of the deceased, besides awarding a sum of Rs.25000/- on account of transportation and funeral expenses and another sum of Rs.1,00,000/- for love and affection.

Dissatisfied with the quantum of compensation awarded by learned Tribunal, the appellants have preferred the present appeal.

Learned counsel for the appellants contends that the deceased- Lal Chand was running a Hotel at Ellenabad under the name and style of 'Sharma Veshno Bhojnalaya and was earning Rs.15000/- per month. He further contends that learned Tribunal failed to appreciate the evidence in proper perspective and wrongly assessed the monthly income of the deceased as Rs.6000/- per month considering him an un-skilled labourer. He also contends that considering the age of the deceased as 22 years, multiplier of '18' instead of '17' should have been applied and future prospectus @ 40% be awarded. It is also the contention of learned counsel for the appellants that no compensation was awarded by learned Tribunal under the conventional heads i.e. consortium as well as loss of estate.

On the other hand, learned counsel for respondent No.3-Insurance Company submits that the monthly income of the deceased, as assessed by the learned Tribunal was just and reasonable. He further contends that as the deduction of 1/2 was rightly made by the learned Tribunal, therefore, compensation awarded admits of no interference by this Court.

After hearing learned counsel for the parties and going through the paper-book as well as the lower Court record, I find force in the arguments advanced by learned counsel for the appellants that in the facts and circumstances of the present case, the learned Tribunal has not appreciated the evidence available on the record in its proper perspective while assessing the monthly income of the deceased. In this regard testimony of mother of deceased/ appellant no.1 is relevant wherein she deposed that her son used to run a

Dhaba and was earning around Rs. 15,000 /- per month. This fact is further supported by the statement of brother of deceased - Shankar Lal who appeared as PW-2. Both these witnesses have been cross examined however truthfulness of their testimony could not be shattered. Besides it, the deceased having been working in unorganized sector, the claimants could not be called upon to produce documentary evidence as regards his income.

Furthermore, learned Tribunal considered the income of deceased to be Rs.6,000 /- per month, however in the year 2016, rate of minimum wages for an unskilled labour was Rs.8,070/-, therefore assessment of income of deceased was wrong and thus, it deserves to be enhanced.

In view of the discussion made hereinabove, I am of the considered opinion that appellants/ claimants brought on record sufficient material to prove that the deceased was running a hotel under the name and style of "Sharma Veshno Bhojnalya" and therefore it would not be too much to assume that deceased was earning around Rs. 10,000/- per month.

Since the deceased was self-employed, earning Rs.10,000/-per month and was aged about 22 years, so future prospects of 40% are to be awarded in view of the judgment of Hon'ble Supreme Court in case titled as **National Insurance Company Ltd. Vs. Pranay Sethi and others,** 2017 (4) RCR (Civil) 1009, wherein it has been held that in case of deceased being self-employed or on a fixed salary, addition of 40% of the established income was to be awarded where the deceased was below the age of 40 years. Besides this, in view of the judgment rendered by Hon'ble Supreme Court in ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, considering the age of deceased about 22 years, the multiplier of '18' instead of '17' should have been applied. Further, the claimants are also held entitled for loss of consortium (filial) to the tune of Rs.44,000/- x 2 = Rs. 88,000/-/ as there are two dependents and Rs.16,500/- towards loss of estate, besides another sum of Rs.16,500/- on account of funeral expenses.

In view of the discussions made hereinabove, the appellants are entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	*Particulars*	*Amount (Rs.)*
1.	*Annual Income of deceased (Rs.10000 x 12)*	*Rs. 1,20,000/-*
2.	*Add 40% of Future prospects*	*Rs.48,000/-*
3.	*Total Income*	*Rs.1,68,000/-*
4.	*Deduction (1/2)*	*Rs.84,000/-*
5.	*Multiplier of 18 as per age of 22 years (Rs.84,000x 18)*	*Rs. 15,12,000/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium (Rs.44000 x 2)*	*Rs.88,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs. 16,33,000/-*
	Amount Awarded by the Tribunal	*Rs.7,37,000/-*
	Enhanced Amount	*Rs 8,96,000/-*

The appellants shall also be entitled for award of interest of 9% per annum on the amount of compensation as awarded to them from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claims shall be deducted from the enhanced compensation.

The present appeal is disposed off in the manner, indicated hereinabove.

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

October 19, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

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