IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 2740/2015

Date of decision:21/02/2023

Susheela and others

………………Appellant

Vs.

Mukesh Kumar and others

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rajinder S.Rana, Advocate for the appellants.

Mr. SS Sidhu,Advocate for respondent Insu.Co.

Nidhi Gupta, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs. 7,05,400/- granted by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') vide Award dated 4.9.2014 passed in MACP 0001192/2013 filed u/s 166 and 140 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

Brief facts of the case are that the Ld. Tribunal on the basis of pleadings and evidence placed before it concluded that the deceased Kushal @ Pinchu @ Prince had died due to injuries suffered by him in an accident that took place on 22.12.2012 due to rash and negligent driving of truck bearing registration NO. HR 69A 3504 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2, and insured by respondent no.4 herein. Claimants are the mother, and one major and one minor sibling of the deceased, who was 19 years old at the time of his death.

It is the pleaded case of the claimants/appellants that the deceased was running a milk dairy and earing Rs.20,000/- per month. Accordingly, Rs.30 lacs were claimed as compensation.

Learned counsel for the appellants seeks enhancement of compensation on the ground that there is no major male surviving member in the family and claimants were entirely dependent on the income of the deceased, who was sole bread winner of the family. It has been submitted that his income has been taken as only Rs.4200/- per month whereas, as per relevant minimum wage notification, income of the deceased should have been taken as Rs.5000/- per month. It is further submitted that future prospects @ 40% should also have been added.

No other argument has been raised on behalf of the appellants.

In response, it is submitted by the learned counsel for the Insurance Company that there is nothing on record to show that the deceased was supporting the claimants.

Heard ld. Counsel for the parties.

Learned Tribunal has calculated the compensation in this case as under:-

Age of the deceased	19 years
Claimants	Mother, sister and brother
Income	Rs.4200/- p.m., say Rs.50,400/-
Add 50% of increase	Rs.25,200/-
Deduction ½ as the deceased was unmarried	Rs.75600-37800= 37800/-
Multiplier (Annualized)	Eighteen (18)
Loss of dependency	Rs.37800x18=Rs.6,80,400/-
Medical expenses	Nil
Loss of consortium	Nil
Loss of love and affection for minor child	Nil
Loss of estate	Nil
Funeral expenses	Rs.25,000/-
Total	Rs.7,05,400/-

Admittedly, claimant no.2/sister of the deceased has attained majority, and it is only claimant no.3- brother of the deceased who is minor. There is no evidence, whatsoever on record to suggest that the claimants were dependent on the deceased as their sole source of income. Accordingly, in my view, deduction of 50% made by the ld. Tribunal towards personal expenses is correct, as the deceased was a bachelor at the time of his death.

Further, except for bald assertions, no evidence whatsoever has been led by the claimants to prove that the deceased was running a dairy farm and earning Rs.20,000/- per month. PW-8 Naveen in his affidavit Ex.PW8/1 mentioned that the deceased was running a milk center and used to sell 30 kilograms of milk daily. However, no documentary proof was placed on record in support of this. Be that as it may, in my view Learned Tribunal has erred in taking the income of the deceased as Rs.4200/- per month, and the same ought to have been taken as per relevant minimum wage notification i.e. @ Rs.5000/- per month. Further, future prospects have been granted @ 50% which is incorrect as the deceased was not in a permanent salaried job.

Future prospects @ 40% should be added. Deduction of 50% towards personal expenses is correct. Deceased was 19 years old at the time of his death as borne out from his Post Mortem Report Ex. P111, therefore, multiplier of 18 has to be applied. In this view of the matter, the compensation is reworked as under:-

Age of the deceased	19 years
Claimants	Mother, sister and brother
Income	Rs.5000/- per month
Add 40% of increase	Rs.2000/-
Deduction ½ as the deceased was unmarried	Rs.7000-3500
Multiplier (Annualized)	Eighteen (18)
Loss of dependency	Rs.7,56,000/-
Medical expenses	Nil
Loss of consortium to the mother	Rs.44,000/-
Loss of love and affection for minor child	Nil
Loss of estate	Rs.16,500/-
Funeral expenses	Rs.16,500/-
Total	Rs.8,33,000/-
Granted by the Tribunal	Rs.7,05,400/-
Interest	7.5% per annum on the enhanced compensation from the date of filing of claim petition till realization.

The ratio of apportionment and manner of disbursement of compensation amongst the claimants, as determined by the Ld. Tribunal remains unchanged.

Disposed of accordingly.

21/02/2023 **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**