IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 484/2020

Date of decision: 11.05.2023.

Sita Devi and others

………………Appellants

Vs.

Prem Kumar and others

………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Narender Kaajla, Advocate for the appellants.

Mr. Pardeep Kumar, Advocate for respondent Insurance Company

Nidhi Gupta, J.

1. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.12,94,000/- granted by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') vide Award dated 3.10.2019 passed in MACP/269/2017 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Five claimants are widow and two minor children and parents of deceased Pyare Lal, who was 27 years at the time of his death.

2. Ld. Tribunal on appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 5.1.2017 due to rash and negligent driving of Hyundi i10 car bearing registration No. HR-20-AB-3033 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. The Tribunal

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awarded compensation as above along with interest @ 7% per annum from the date of filing of the claim petition till realization. Respondents were jointly and severally held liable to pay the compensation.

3. Ld. Counsel for the claimants seeks enhancement of compensation on the ground that income of the deceased has been taken on lower side as only Rs.8000/- per month as that of labourer. It is submitted that it was categorically asserted before the Ld. Tribunal that prior to the accident deceased was running a shop of seat covers as well as other accessories of vehicles and earning Rs.50,000/- per month. It is submitted that in these circumstances, Ld. Tribunal ought to have assessed notional income of the deceased as per prevailing D.C. Rate @ Rs.10,911/- per month. It is further submitted that the deceased was 27 years at the time of his death, however, nothing has been granted by the Ld. Tribunal by way of future prospects. It is submitted that as per judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, an addition of 40% ought to have been made towards future prospects.

4. In response, it is submitted by the ld. Counsel for the Insurance Company that no evidence whatsoever has been led by the appellants to prove the alleged avocation of the deceased and therefore, there is no error in notional income as assessed by the Tribunal. It is very fairly conceded that addition of 40% ought to have been made towards future prospects.

5. No other argument has been raised.

6. Heard ld. Counsel.

7. Perusal of the record of the case shows that as per MLR Ex.P5 age of the deceased was 27 years at the time of his death. Admittedly no

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cogent evidence has been led by the appellants to prove that the deceased was running a shop of seat covers and vehicle accessories, however, in view of said categoric averment on behalf of the appellants which has not been rebutted by the respondent, in my view, it would be just and fair to take income of the deceased as that of a skilled labourer. As per Government of Haryana Notification No.IR-2/7083-7193 dated 02.03.2017 w.e.f. 1.1.2017 minimum wage admissible to a skilled labourer is Rs.10,064.62 per month. Accordingly, income of the deceased is taken as 10,064.62 per month, rounded off to Rs.10,000/-. As per judgment of Hon'ble Supreme Court in **Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav (SC) Law Finder Doc Id# 1888548**, it has been held that merely because claimants were unable to produce documentary evidence to show monthly income of the deceased, same does not justify adoption of lowest tier of minimum wage while computing income. No doubt an addition of 40% ought to have been made towards future prospects.

8. Accordingly, compensation payable to the appellants is reworked as under:-

Sr.No.	Head	Awarded by the Tribunal	Amount (in rupees)
1	Income	8000/-	10,000/-
2.	40% future prospects	--	4,000/-
3.	Total income	8000/-	10,000+4,000/- = 14,000/-
4	1/4th deduction towards personal expenses	8000-2000=6000	14,000 – 3,500 = 10,500/-
5.	Multiplier-17	6000x12x17= 12,24,000/-	10,500 x 12 x 17= 21,42,000/-
6.	Loss of consortium	40,000/-	44,000/-
7.	Loss of estate	15,000/-	16,500/-
8.	Funeral expenses	15,000/-	16,500/-

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9.	Total	12,94,000/-	22,19,000/-

9. Rate of interest @7% per annum as granted by the ld Tribunal is maintained. Ratio of apportionment, and manner of disbursement of compensation as determined by the learned Tribunal is maintained.

10. Accordingly, present appeal stands **allowed** in above terms.

11. Application(s), if any, stand disposed of.

11.05.2023. **(Nidhi Gupta)**
Joshi **Judge**

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