(2019) 01 P&H CK 0215

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 2227 Of 2014, Cross Objection No. 229-CII Of 2018

Chola Mandlam General Insurance Co. Ltd. — APPELLANT

Vs

Manohar Lal And Others — RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 01 P&H CK 0215

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Rajneesh Malhotra, Atul Yadav, Aazam Khan, R.K. Sharma

Final Decision : Allowed

Judgement

Avneesh Jhingan, J

The present appeal has been filed by the insurer of Dumper bearing registration No.HR-38-R-1964 (for short 'offending vehicle') against award dated 1.5.2013 passed by the Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal'). Cross objections have also been filed by the claimants seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The issue involved in appeal as well as in the cross-objections is regarding quantum of compensation.

The brief facts are that on 8.9.2011 Narender Kumar was standing near Petrol Pump and waiting for a conveyance. At that time he was hit by a rashly and negligently driven offending vehicle. As a result of impact, he fell down and was run over by the offending vehicle. He died at the spot. FIR No. 306 dated 8.9.2011 was registered at Police Station Sohna, Gurgaon.

The claim petition was filed by parents and sister of the deceased under Section

166 of the Act. Before the Tribunal it was pleaded that the deceased was working as a cleaner on a Truck and was earning Rs. 9000/- per month. But, the claimants failed to substantiate the monthly earning of the deceased. The Tribunal assessed the monthly earning as Rs. 6000/-; 1/3rd deduction was made for self-expenses and multiplier of 18 was applied. The Tribunal awarded a sum of Rs. 9,04,000/- along with interest at the rate of 9% per annum. The amount awarded included Rs. 30,000/- for loss of love and affection and Rs. 10,000/- for funeral expenses. The driver, owner and insurer were held jointly and severally liable to pay compensation.

I have heard learned counsel for the parties and perused the relevant documents produced by them.

Learned counsel for the insurer contends that the deceased was unmarried. The Tribunal erred in making 1/3rd deduction for self-expenses instead of 1/2th. His grievance is that no amount is to be awarded for loss of love and affection.

Learned counsel for the claimants argues that no future prospects have been awarded and no amount has been awarded for loss of estate.

There is no dispute between the parties with regard to monthly income assessed by the Tribunal, multiplier of 18 applied and the fact that the deceased was 22 years of age at the time of accident.

Having due regard to the decision of the Supreme Court in case of National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157 and Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480, as the deceased was below 40 years of age and falls within the category of having fixed wages, 40% future prospects are awarded.

The claimants are entitled to Rs. 15,000/- each for loss of estate and funeral expenses. No amount is awarded for loss of love and affection.

As the deceased was unmarried at the time of accident, in consonance with the decision of the Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21, ½ deduction for self-expenses is made.

In view of above discussion, the compensation is recalculated as under:

Sr. No.

Particulars

Amount

1.

Monthly income

Rs. 6000/-

2.

40% future prospects

Rs. 2400/-

3.

½   deduction for self-

Rs. 4200/-

expenses

4.

Applying multiplier

of

Rs. 9,07,200/-

18

5.

Conventional heads

Rs. 30,000/-

Rs. 15000/- each for loss of

estate and funeral expenses

6.

Total

Rs. 9,37,200/-

The award dated 1.5.2013 is modified to the extent that amount awarded of Rs. 9,04,000/- by the Tribunal is enhanced to Rs. 9,37,200/-. The counsel fee assessed is maintained as such.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is allowed in the aforesaid terms.