(2019) 05 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 909 Of 2015

Kirpal Kaur		APPELLANT
	Vs	
Mannu Kumar And Others		RESPONDENT

Date of Decision : 02-05-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Indian Penal Code, 1860 — Section 279, 304A, 337

Citation : (2019) 05 P&H CK 0034

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Deepa Negi, Tekwinder Singh Rai, Ashwani Arora, Nitin Grover

Final Decision : Allowed

Judgement

Avneesh Jhingan, J

The award dated 20.10.2014, passed by the Motor Accident Claims Tribunal, Rupnagar (for short 'the Tribunal') has been assailed by the mother of Satvir Kaur (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The driver of Indica car bearing registration No.PB-01-1076 (hereinafter referred to as offending vehicle), the owner and insurer (i.e The New India Assurance Co. Ltd.) have been arrayed as respondents no.1 to 3 respectively in the appeal. The father of the deceased is proforma respondent no.4 in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 08.12.2011, Mohan Singh was driving a motorcycle bearing registration No. PB-12C-8830 and Satvir Kaur was the pillion rider. They were being followed by Sapinder Singh and Mewa Singh on separate motorcycle bearing registration No.PB-65B-8337. On the way, the motorcycle driven by Mohan Singh met with an accident involving the offending vehicle. As a result of the impact, Satvir Kaur sustained injuries. She was taken to Civil Hospital, Ropar but was declared dead in the ambulance itself. FIR No.182 dated 08.12.2011 was registered under Sections 279,337 and 304-A IPC at Police Station Morinda.

A claim petition under Section 166 of the Act was filed by the mother of the deceased. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was result of rash and negligent driving of the offending vehicle. The insurer of the offending vehicle was held liable to pay compensation with right to recover the compensation from the owner of the offending vehicle. The recovery right was given as the Driving Licence produced was not found to be valid.

In the claim petition, it was pleaded that the deceased was 25 years of age, and was an M.B.A degree holder. She was to appear in an interview for the post of Constable in Punjab Police, which was to be held on 08.12.2011. The detailed mark sheet of Master of Business Administrative from Punjab Technical University, Jalandhar was exhibited as Exs.P2 and P3, certificates Ex.P5 to P8 were produced to show that she was a member of National Cadet Corps participating in National Service Scheme; she participated in National Hiking and Trekking programme. She was also given appreciation certificate which was exhibited as Ex.P8. Her income was assessed as Rs.10,000/- per month; ½ deduction for self expenses as she was unmarried; multiplier of 11 was applied considering the age of the mother of the deceased; total sum of Rs.6,75,000/- was awarded along with interest @ 9% per annum. The amount awarded included Rs.10,000/- for funeral and Rs.5,000/- for transportation.

Heard learned counsel for the parties and the relevant documents produced by them.

Learned counsel for the appellant argues that no future prospects have been awarded. The grievance is that Tribunal erred in applying multiplier of 11 considering the age of mother of the deceased and no amount has been awarded for loss of estate.

Learned counsel for respondent no.1 while defending the award resisted any further enhancement.

The contention raised by the learned counsel for the appellant deserves acceptance.

The deceased was below 40 years of age at the time of accident and fell in category of self employed or person having fixed income. In consonance with the decisions of the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157 and Hem Raj Vs.Oriental Insurance Company Ltd. 2018 (2) PLR 480; 40% future prospects are awarded. In view of the decision of Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157, the claimant is entitled to Rs.15,000/- each for funeral expenses and loss of estate.

The Tribunal erred in applying multiplier of 11 considering the age of the mother of the deceased. As per decision of the Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21, multiplier of '18' is to be applied as deceased was 25 years of age.

The issue regarding application of multiplier considering the age of the deceased and not as per age of the claimants is no longer res-integra. The Supreme Court in the case of Sube Singh and another vs. Shyam Singh (Dead) and others; (2018)3 SCC 18 has held as under:

"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."

(emphasis supplied)

The Supreme Court in its recent decision in M/s. Royal Sundaram Alliance Insurance Company Ltd. v. Mandala Yadagari Goud and others, Civil Appeal No. 6600 of 2015. decided on 9.4.2019 has reiterated this fact and held as under:-

"9. The focus for determination of such claim is the deceased and what would be his contribution towards the dependents would he to be alive, for the benefits of the dependents. It is trite to say, and in fact conceded by the learned counsel for the insurance company, that in case the deceased is a married person, it is the age of the deceased which is to be taken into account. The question is whether in case the deceased is a bachelor, a different principle for calculation of the multiplier should be applied by shifting the focus to the age of the claimants? We are of the view that the answer to this question should be in the negative.

10. We may also note the importance of applying uniform settled principle to such cases. Certainty of law is important. Once the law is settled, it should not be repeatedly changed as that itself causes confusion and litigation. It is with this objection that this Court has endeavoured to settle legal principles in respect of the matter in question.

11. A reading of the judgment in Sube Singh (supra) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench

in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on : (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf.

12. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.

13. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

In view of above discussion, the compensation is re-calculated as under:-

Head

Compensation

awarded in Rs.

i

Monthly

10,000/- per month

Income

assessed

by

Tribunal

ii

Future

4000/-

prospects

at

per month

40%

iii

Total Income

14,000/-per month

iv

Deduction

for

7,000/- (½)

personal

expenses

v

Multiplier

18(as per age of

deceased)

vi

Loss of income

7000X12X18=

15,12,000/

vii

Funeral

15,000/-

expenses

viii

Loss of estate

15,000/-

ix

Total

15,42,000/-

Compensation

awarded

The award dated 20.10.2014 is modified to the extent that amount of

Rs.6,75,000/- awarded by the Tribunal is enhanced to Rs.15,42,000/-. The claimant shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.