(2018) 12 P&H CK 0160

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 2266, 656 Of 2015 (O&M)

National Insurance Co. Ltd. APPELLANT

Vs

Charanjit Kaur And Others RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2018) 12 P&H CK 0160

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Amrinder Singh Sidhu, Gaurav Aggarwal, Bhupinder Singh Bairagi

Final Decision : Disposed off

Judgement

Avneesh Jhingan, J.

The aforesaid two appeals are being disposed of by a common order as they are arising out of the same accident.

The award dated 18.10.2014 passed by the Motor Accident Claims Tribunal, Sirsa (for short 'the Tribunal') has been assailed by filing two appeals, one by the insurer of Car bearing temporary No. HR-99-LZ-0047 (hereinafter referred to as 'offending vehicle') and another by the parents of Dalwinder Singh (deceased).

The grievance in both the appeals is with regard to quantum of compensation awarded by the Tribunal.

The brief facts necessary for the adjudication of both the appeals are that on 15.10.2012, Dalwinder Singh alongwith Sukhjit Singh had gone to Dabwali for sale of paddy crop in Anaj Mandi. They were returning to their village on motorcycle bearing registration No. PB-53-A-6676. When they reached near T-point of village Shergarh, the motorcycle was struck by a rashly and negligently driven offending vehicle. As a result of the impact, Dalwinder Singh sustained injuries and died on his way to the hospital. FIR No. 409, dated 15.10.2012 was registered at Police Station City Dabwali.

A claim petitions under Section 166 of the Motor Vehicles, Act 1988 (for short 'the Act') was filed before the Tribunal by the unfortunate parents who lost their young son in the motor vehicular accident.

The Tribunal after considering the facts and appreciating the evidence adduced, held that the accident was caused due to the rash and negligent driving of the offending vehicle. The driver-cum-owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a compensation to the tune of Rs.11,00,000/- alongwith interest @7.5% per annum. The amount awarded included Rs.20,000/- for funeral expenses.

The claimants before the Tribunal pleaded that the deceased was 20 years of age and was a student of 10+2. It was claimed that he was assisting his father in agricultural pursuits and was earning Rs.15,000/- per month. But the claimants failed to substantiate the monthly earning of the deceased and the fact that he was assisting his father in the agricultural pursuits. Consequently, the Tribunal assessed the monthly income of the deceased as Rs.5,000/- and applied multiplier of 18.

Heard learned counsel for the parties and perused the record. Learned counsel for the claimants argued that the Tribunal erred in assessing the monthly income of the deceased as Rs.5000/-, as he was a student of 10+2. In any case he should have been treated at least as a semi-skilled labourer. His grievance is that no amount has been awarded for future prospects and for loss of estate.

Learned counsel for the insurer argued that the claimants failed to substantiate the monthly earning of the deceased. Hence, the Tribunal has rightly assessed the same as Rs.5,000/- per month. He further argued that no deduction for self-expenses has been made by the Tribunal. His grievance is that the amount awarded for funeral expenses is on higher side.

There is no dispute between the parties with regard to the age of the deceased as well as multiplier applied of 18.

The deceased was a student of 10+2. The said fact has not been disputed. It was pleaded that alongwith his studies he was assisting his father in agricultural pursuits. The said pleadings is fortified by the fact that at the time of accident, he was returning from Anaj Mandi where he had gone to sell paddy crop. It would not be appropriate to equate him with an unskilled labourer. A young boy whose work is evident from the pleadings should not be equated with an un-skilled labourer. He had bright future ahead. Parents have lost their young son in a motor vehicular accident. No doubt that no monetary compensation can fulfill their loss, yet the duty is cast upon the courts to award just and equitable compensation.

Keeping in view the facts and circumstances and totality of the case, it is deemed proper that the monthly income of the deceased is to be assessed as Rs.6000/- per month.

Keeping in view the age of the deceased and having due regard to the decisions of the Supreme Court in National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009 and Hem Raj vs. Oriental Insurance Company Ltd ; 2018 (2) PLR 480; 40% future prospects are awarded. Claimants are entitled to Rs.15,000/- each for funeral expenses and loss of estate.

The deceased was unmarried. Hence, keeping in view the decision of the Supreme Court in Smt. Sarla Verma and others vs. Delhi Transport Corporation and another; (2009) 6 SCC 121, ½ deduction is made for self- expenses.

In view of afore-said discussion, the compensation is recalculated as

Head

Compensation awarded

(i)

Income

Rs.6000/- per month

(ii)

Future prospects at 40%

Rs.2400/- per month

(iii)

Total Income

Rs.8400/- per month

(iv)

Deduction of personal expenses

Rs.4200/- (i.e. 1/2 of total income)

(v)

Multiplier

18 (as per age of deceased)

(vi)

Total Dependency

Rs.4200x12x18=Rs.9,07,200/-

(vii)

Funeral expenses

Rs.15,000/-

(viii)

Loss of estate

Rs.15,000/-

Total Compensation awarded

Rs.9,37,200/-

The award dated 18.10.2014 is modified to the extent that the amount awarded of Rs.11,00,000/- is reduced to Rs.9,37,200/-. The claimants shall be entitled to interest @8% per annum on the aforesaid amount of compensation from the date of filing of the claim petition till the realization of amount.

Both the appeal are disposed of in the afore-said terms.

