(2019) 01 P&H CK 0217

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 1109 Of 2017

National Insurance Company Ltd. APPELLANT

Vs

Smt. Harpinder Kaur @ Simarjit Kaur And Others RESPONDENT

Date of Decision : 30-01-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 01 P&H CK 0217

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Harjinder Singh, Manu Loona

Final Decision : Partly Allowed

Judgement

Avneesh Jhingan, J

The insurer of truck bearing registration No. PB-05G-9766 [hereinafter referred to as 'offending vehicle'] is in appeal against award dated 20.11.2015 passed by the Motor Accident Claims Tribunal, Fazilka [for brevity 'the Tribunal']. The grievance raised in the appeal is regarding quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] for death of Narinder Singh.

The claimants have been arrayed as respondents No.1 to 4 and driver-cum-owner of offending vehicle is respondent No.5 in the present appeal.

The facts necessary for adjudication of the present appeal are that on 12.01.2013, Narinder Singh (deceased) alongwith Dharminder Singh, Gurvinder Singh @ Bittu and Gurinder Singh was going in a Maruti Car bearing registration No. CH-01X-8223. The car was being driven by the deceased. When they reached near Goluke Maur, the car was hit by a rash and negligent driven offending vehicle. As a result of the impact, Narinder Singh died at the spot. FIR No.14, dated 13.01.2013 was registered at Police Station Guru Har Sahai.

A claim petition was filed by the widow, minor child and parents of the deceased. It was pleaded that the deceased was working as a Carpenter and was earning Rs.30,000/- per month. The claimants failed to substantiate monthly earning of the deceased. But, CW-3 Gurdit Singh deposed before the Tribunal and stated that the deceased had five employees working under him. He further stated that the deceased had worked in his Kothi and prepared 62 doors and windows and did the wooden work in kitchen, in lieu of which, he took Rs.84,000/- as contracted.

It was proved that the deceased was 10+2 pass. Thus, the Tribunal considered him as a Carpenter. After appreciating the evidence adduced, the Tribunal held that the deceased was taking contracts and his monthly earning was assessed as Rs.8,000/-. The Tribunal awarded 50% future prospects; 1/4th deduction for self-expenses was made and multiplier of '17' was applied. The Tribunal awarded compensation of Rs.20,61,000/- alongwith interest @ 6% per annum. It was further stated that in case the payment is not made within the stipulated time i.e. 3 months from the date of passing of the award, the rate of interest shall be 9%.

It was held by the Tribunal that accident took place due to rash and negligent driving of the offending vehicle. The owner-cum-driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

Heard learned counsel for the parties, perused the paper book and relevant documents produced by them.

Learned counsel for the appellant contends that the claimants failed to prove monthly earning of the deceased. The Tribunal erred in assessing income of the deceased as Rs.8,000/- per month, whereas wages for a skilled labourer were Rs.6,900/- per month at the time of accident in the State of Punjab. He further contends that 50% future prospects have wrongly been awarded. The amounts awarded under the conventional heads are on the higher side and no amount can be awarded for loss of love & affection. He submits that 1/4th deduction for self-expenses has wrongly been made as father is not to be considered dependent on the deceased.

Learned counsel for the claimants argues that the deceased was a Carpenter. He was 27 years old and he is survived by widow, minor child and old parents. He defends the monthly income assessed by the Tribunal. But, he could not raise any serious dispute that 50% future prospects are awarded in contradiction to the decisions of the Supreme Court in cases of 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. He further argues that it was duly proved that father was not working anywhere at the time of accident and was dependent on his son's earning.

There is no dispute between the parties with regard to age of the deceased, multiplier applied and the fact that he was a Carpenter.

The contention raised by learned counsel for the appellant challenging the monthly earning assessed by the Tribunal lacks merit. There is no quarrel on the proposition that in case where the claimants failed to substantiate monthly earning of the deceased, the reliance is to be placed upon the minimum wages prevalent in the State at the time of accident. But, there cannot be a straight jacketed formula that in every case and in all circumstances, income is to be assessed by relying upon the minimum wages. It is only a yardstick to be relied upon.

In the present case, the deceased was working as a Carpenter and was 27 years old at the time of accident. Apart from the pleadings, CW-3 Gurdit Singh deposed before the Tribunal that the deceased worked as a Carpenter in his Kothi and had 5 employees under him. From his statement, it is evident that he was taking contracts and he had charged Rs.84,000/- from CW-3 Gurdit Singh for making doors, windows and kitchen work in his Kothi. In such circumstances, it would not be appropriate to strictly follow the minimum wages considering the fact that minimum wages for a skilled labourer at the time of accident were Rs.6,900/- per month.

The amount assessed by the Tribunal cannot be said to be exorbitant. It is the duty of the Court that just and equitable compensation is awarded. The only check to be kept is that it should not be a windfall for the claimants. No interference is called for in monthly earning of the deceased assessed by the Tribunal.

In view of 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, 50% future prospects awarded by the Tribunal cannot be sustained. The deceased was below 40 years of age and he falls within the category of self-employed, hence 40% future prospects are awarded.

The deceased was survived by widow, minor child and old parents. Father of the deceased deposed before the Tribunal and stated that he was not working and was dependent upon the earning of his son. The said deposition was not contradicted. In such circumstances, the deceased was survived by four dependents. In consonance with decision of the Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21, ¼th deduction for self-expenses has rightly been made by the Tribunal.

As per decisions of the Supreme Court in Pranay Sethi's case (supra), the claimants are entitled to Rs.15,000/- each for funeral expenses and loss of estate. Rs.40,000/- are awarded to widow for loss of consortium. No amount is awarded for loss of love & affection.

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

Particulars

Amount (in Rs.)

Monthly income of the deceased as assessed

8,000/-

40% Future Prospects

3,200/-

Sub Total

11,200/-

1/4th deduction for self expenses

2,800/-

Monthly Dependency

8,400/-

Annual Dependency

1,00,800/-

Applying multiplier of '17'

17,13,600/-

Funeral Expenses

15,000/-

Loss of Estate

15,000/-

Loss of consortium to widow

40,000/-

Grand Total

17,83,600/-

The award dated 20.11.2015 is modified to the extent that amount of Rs.20,61,000/- awarded by the Tribunal is reduced to Rs.17,83,600/-.

While issuing notice of motion on 20.02.2017, recovery of amount beyond Rs.12,00,000/- was stayed. The claimants shall be entitled to balance amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

