(2019) 03 P&H CK 0159

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 3639, 3640 Of 2007

Neelam Kumari And Others — APPELLANT

Vs

Vinay Kumar And Others — RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 03 P&H CK 0159

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Anubhav Bansal, Arun Bansal, Munish Gupta, Vinod Gupta

Final Decision : Allowed

Judgement

Avneesh Jhingan, J

The award dated 05.02.2003, (modified vide order dated 23.08.2004) passed by the Motor Accident Claims Tribunal, Hoshiarpur [for brevity 'the Tribunal'] in M.A.C. Cases No.71 of 30.07.1999 and No.70 of 30.07.1999 has been assailed by filing two separate appeals by the claimants seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. Since both the appeals arise from same award, these are being disposed of by a common order.

The claimants before the Tribunal in M.A.C. Case No.71 of 30.07.1999 were widow, minor daughter and mother of Bodh Raj (deceased). The claimants in M.A.C. Case No.70 of 30.07.1999 were widow, three minor children and mother of Kuldeep Singh (deceased).

The respondents before the Tribunal in both the claim petitions were driver, owner and insurer (i.e. New India Assurance Company Ltd.) of Tractor bearing registration No. PB-07G-1489 [hereinafter referred to as 'offending vehicle'].

The facts emanating from the record are that on 03.02.1999, a marriage party was standing on the KATCHA portion of the road heading towards Talwara. In the meanwhile, offending vehicle struck against Bodh Raj and then against Kuldeep Singh. As a result of the impact, Bodh Raj and Kuldeep Singh sustained grievous injuries and were taken to B.B.M.B. Hospital, Talwara, where both were declared dead by the Doctors. The driver of the offending vehicle fled away from the spot alongwith offending vehicle. He was followed by Mangal Singh and Soami Lal on a scooter. The driver of the offending vehicle was caught who disclosed his name to be Vinay Kumar s/o Roshan Lal r/o Village Dhar. FIR was registered.

The Tribunal after considering the facts and appreciating the evidence adduced held owner, driver and insurer of the offending vehicle jointly and severally liable to pay the compensation. It was further stated that if so advised, the Insurance Company may recover the same from owner of the offending vehicle.

FAO NO.3639 OF 2007:

In the claim petition, it was proved that the deceased (Bodh Raj) was 30 years old at the time of accident. He was claimed to be a labourer. The Tribunal assessed monthly earning of the deceased as Rs.2,400/- as the claimants failed to prove monthly earning of the deceased; 1/3rd deduction for self-expenses was made and multiplier of '14' was applied. The Tribunal awarded a sum of Rs.2,80,800/- alongwith interest @ 9% per annum as per modified order dated 23.08.2004. The amount awarded included Rs.2,000/- for funeral expenses; Rs.5,000/- for loss of consortium and Rs.5,000/- for loss of love & affection.

Learned counsel for the appellants contends that no future prospects have been awarded, multiplier of '14' has wrongly been applied as the deceased was 30 years old. The grievance raised is that amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer while defending the award resists any further enhancement.

Having due regard to 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. The claimants shall also be entitled to Rs.15,000/- each for funeral expenses and for loss of estate. Rs.40,000/- are awarded to the widow for loss of consortium.

The Tribunal erred in applying multiplier of '14'. In consonance with the decision of the Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21, multiplier of '17' is applied, as the deceased was 30 years old at the time of accident.

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

Particulars

Amount (in Rs.)

Monthly income of the deceased as assessed

2,400/-

40 % Future Prospects

960/-

Sub Total

3,360/-

1/3rd deduction for self expenses

1,120/-

Monthly Dependency

2,240/-

Annual Dependency

26,880/-

Applying multiplier of '17'

4,56,960/-

Funeral Expenses

15,000/-

Loss of Estate

15,000/-

Loss of consortium to the widow

40,000/-

Grand Total

5,26,960/-

The award dated 05.02.2003 passed in M.A.C. Case No.71 of 30.07.1999 is modified to the extent that amount of 2,80,800/- awarded by the Tribunal is enhanced to Rs.5,26,960/-. The claimants 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.

FAO NO.3640 OF 2007:

In the claim petition filed for claiming compensation for death of Kuldeep Singh, the claimants claimed that the deceased was 35 years old and was earning Rs.4,000/- per month, albeit, the claimants failed to substantiate the occupation and monthly earning of the deceased. The Tribunal assessed monthly earning of the deceased as Rs.2,400/- per month; 1/3rd deduction for self-expenses was made and multiplier of '13' was applied. The Tribunal awarded a sum of Rs.2,61,600/- alongwith interest @ 9% per annum as per modified order dated 23.08.2004. The amount awarded included Rs.12,000/- under the conventional heads.

Learned counsel for the appellants contends that no future prospects have been awarded, multiplier of '13' has wrongly been applied as the deceased was 35 years old.

Further, 1/3rd deduction for self-expenses has wrongly been made instead of 1/4th as the deceased was survived by five dependents. The grievance raised is that amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer while defending the award resists any further enhancement.

Having due regard to the decisions of the Supreme Court in Pranay Sethi's and Hem Raj's cases (supra), 40% future prospects are awarded. The claimants shall also be entitled to Rs.15,000/- for funeral expenses and for loss of estate. Rs.40,000/- are awarded to the widow for loss of consortium.

Since the deceased was survived by five dependents, 1/4th deduction for self-expenses is made.

The Tribunal erred in applying multiplier of '13'. In consonance with the decision of the Supreme Court in Sarla Verma's case (supra), multiplier of '16' is applied, as the deceased was 35 years old at the time of accident.

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

Particulars

Amount (in `)

Monthly income of the deceased as assessed

2,400/-

40 % Future Prospects

960/-

Sub Total

3,360/-

1/4th deduction for self expenses

840/-

Monthly Dependency

2,520/-

Annual Dependency

30,240/-

Applying multiplier of '16'

4,83,840/-

Funeral Expenses

15,000/-

Loss of Estate

15,000/-

Loss of consortium to the widow

40,000/

Grand Total

5,53,840/-

The award dated 05.02.2003 passed in M.A.C. Case No.70 of 30.07.1999 is modified to the extent that amount of Rs.2,61,600/- awarded by the Tribunal is enhanced to Rs.5,53,840/-. The claimants 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.

