(2019) 05 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 3919, 4494 Of 2017 (O&M)

New India Assurance Company Limited — APPELLANT

Vs

Parveen Bibi And Others — RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 05 P&H CK 0063

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Mandeep Singh, Jagpal Singh, Ashwani Talwar, Lalit Kumar

Final Decision : Disposed Off

Judgement

The award dated 6.2.2017 passed by the Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as 'the Tribunal') has been assailed by the insurer of Trallor bearing registration No.PB-03AJ-9066 (for short 'the offending vehicle') and by the legal representatives of Sadiq Mohd. by filing two separate cross-appeals.

The issue in both the appeals is with regard to quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), hence, both are being disposed of by a common order.

The factum of accident has not been disputed by the parties. A motor vehicular accident took place on 17.11.2015. The accident proved fatal for Sadiq Mohd. aged 30 years. The accident was result of rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

In the claim petition, it was pleaded that the deceased was working as a carpenter also doing agricultural work and running a dairy. His income was claimed to be Rs.35,000/- per month. The claimants failed to prove the occupation and earning of the deceased. The Tribunal assessed the monthly earning of the deceased as Rs.7500/-; 50% future prospects were awarded; 1/3rd deduction for self-expenses were made and multiplier of 17 was applied. The Tribunal awarded a sum of Rs.17,55,000/- along with interest at the rate of 7.5% per annum. The amount awarded included Rs.25,000/- for funeral expenses, Rs.1,00,000/- for loss of love and affection and Rs.1,00,000/-for loss of consortium.

Learned counsel for the insurer argues that the claimants failed to prove the occupation and monthly earning of the deceased and the income assessed by the Tribunal is on higher side. He further argues that the Tribunal erred in awarding 50% future prospects instead of 40%. His submission is that the amount under the conventional heads be awarded as per the decision of the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.

Learned counsel for the claimants contends that the deceased was 30 years of age and was a carpenter, he was survived by a young widow, minor child and an old mother. The income assessed is on lower side.

There is no dispute between the parties with regard to multiplier of 17 applied and 1/3rd deduction made for self-expenses as the same are in consonance with the decision of the Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.

In the claim petition it was pleaded that the deceased was working as a carpenter. Though the claimants had to prove the monthly earning and occupation of the deceased. In cases where the claimants failed to prove the monthly earning of the deceased, one of the yardstick to be considered is the minimum wages prevalent at the relevant time. The minimum wages are not to be rigidly applied by the Courts, the Courts have to consider other aspects like the dependants survived by, age of the deceased, etc.

In the present case, it was pleaded that the deceased was working as a carpenter albeit the claimants failed to prove the occupation, in order to award just and equitable compensation, the income of the deceased is assessed as Rs.8000/- per month.

The deceased was below 40 years and fell in the category of self-employed or having fixed wages, as per the decision of the Supreme Court in Pranay Sethi's case (supra) and Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480 40% future prospects are awarded.

As per the decision of the Supreme Court in Pranay Sethi's case (supra), Rs.15,000/- each is awarded to the claimants for funeral expenses and for loss of estate and Rs.40,000/- is awarded to the widow for loss of consortium.

The compensation is calculated as under:

Sr. No.

Particulars

Amount awarded (Rs.)

1.

Income

8000/-

2.

40% future prospects

11,200/-

3.

1/3rd deduction for self-

3733/-

expenses

4.

Applying multiplier

of

15,23,268/-

17 (7467 x 12 x17)

5.

Conventional heads

70,000/-

6.

Total

15,93,268/-

The award dated 6.2.2017 is modified to the extent that amount awarded of Rs.17,55,000/- by the Tribunal is reduced to Rs.15,93,268/-.

Vide order dated 2.6.2017, recovery of amount of compensation beyond Rs. 11,25,000/- was stayed. The claimants shall be entitled to balance amount alongwith interest as awarded by the Tribunal.

Both the appeals are disposed of in the aforesaid terms.