(2019) 04 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 7066 Of 2011, No. 50 Of 2012

Oriental Insurance Company Ltd. APPELLANT

Vs

Bhateri And Others RESPONDENT

Date of Decision : 09-04-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 04 P&H CK 0116

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : R.N. Singal, Amit Kumar Jain

Final Decision : Partly Allowed

Judgement

Avneesh Jhingan, J

The award dated 26.9.2011 passed by Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') has been assailed by filing two separate appeals one by the insurer of Truck Trolla bearing registration No.MH-06AC-5736 (for short 'the offending vehicle') and another by the legal representatives of Ashok Kumar, being aggrieved of quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). As both the appeals arise from same accident and one award, hence these are being disposed of by common order.

The facts emanating from the record are that on 24.9.2009 Ashok Kumar was standing on the Kacha side of the road in front of workshop of Panchal Engineering Works, Rohtak-Jind Road, village Titoli District Rohtak. In the meanwhile, the offending vehicle struck against Ashok Kumar, as a result of the impact, he fell down and the side wheel of the offending vehicle passed over his body and he died on the spot. FIR was registered. A claim petition was filed by the widow and three minor children.

In the claim petition it was pleaded that Ashok Kumar was 40 years of age, he was employed as Hammer man in Bhuna Coop. Sugar Mills Ltd., Bhuna and was drawing monthly salary of Rs. 7576/-. On closure of the Sugar Mill the services of the deceased were discontinued, thereafter he was working with M/s Panchal Engineering Works, Rohtak-Jind Road, Titoli, District Rohtak. He was employed at the salary of Rs. 7000/- per month and at the time of accident was drawing a salary of Rs. 8000/-. The Tribunal assessed the monthly earning as Rs. 8000/-, made 1/4th deduction for self-expenses and multiplier of 16 was applied. A total sum of Rs. 11,72,000/- along with interest at the rate of 7% per annum was awarded. The amount awarded included Rs. 10,000/- for loss of estate and loss of consortium and Rs. 10,000/- for funeral expenses.

Heard learned counsel for the parties and perused the record.

The grievance raised by learned counsel for the insurer is two fold. Firstly, that the Tribunal erred in accepting the evidence with regard to monthly earning of the deceased being Rs. 8000/-. He further argues that deceased was considered in the age group of 35-40 but multiplier of 16 has wrongly been applied instead of 15.

Learned counsel for the claimants defends the income assessed by the Tribunal. The grievance raised is that no future prospects have been awarded and the amount awarded under conventional heads are on lower side.

The contention raised by learned counsel for the insurer challenging the income assessed of the deceased is not well founded. The salary slip issued by Bhuna Coop. Sugar Mills Ltd., was exhibited as Ex.P1. As per the said salary slip the deceased was drawing salary of Rs. 7576/-. Rishi Pal s/o Balwan Singh, owner of M/s Panchal Engineering Works deposed as PW5. He produced the entries in salary register Ex.P11 to Ex.P19. On these entries there are signatures of deceased on the revenue stamp, all this proves that the payment of Rs. 8000/- per month was being paid to deceased.

Learned counsel for the insurer to buttress his arguments relies upon the cross-examination of Rishi Pal wherein it has been stated that he is not having sale tax number and is not registered with any authority. Further it was said that the salary register produced did not bear the signatures of owner.

The contentions raised do not enhance the case of the insurer. M/s Panchal Engineering Works was a workshop in which the deceased was employed as a Mechanic. The cross-examination relied upon no where establishes that there was any requirement under any statute to get such a small workshop to be registered with any authority. Even if there were no signatures of the employer on the salary register but the signatures of the deceased were there on the revenue receipt, there is no occasion to doubt the same. No interference is called for in the income assessed by the Tribunal.

In the claim petition it was pleaded that deceased was 40 years of age. As per the postmortem report, the age was mentioned as 33 years. In such circumstances, the deceased is to be considered in the age group of 35-40 years.

There is nothing on record to establish that he had completed 40 years of age. In consonance with the decisions of 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 as deceased was having a fixed wages, 40% future prospects are awarded. The claimants are entitled to Rs.15,000/- each for loss of estate and funeral expenses and Rs. 40,000/- for loss of consortium as per Pranay Sethi's case (supra); 1/4th deduction made by the Tribunal is as per the decision of the Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21 and as per the said decision, the multiplier of 15 is applied considering the age of deceased.

In view of the above discussion, the compensation is recalculated as under:

Sr. No.

Particulars

Amount awarded

1.

Monthly income

Rs. 8000/-

2.

40% future prospects

Rs. 3200/-

3.

1/4th deduction for selfexpenses

Rs. 2800/-

4.

Applying multiplier of 15 (8400x12x15)

Rs. 15,12,000/-

5.

Conventional heads

Rs. 70,000/-

6.

Total

Rs. 15,82,000/-

The award dated 26.9.2011 is modified to the extent that amount of Rs. 11,72,000/- awarded by the Tribunal is enhanced to Rs. 15,82,000/-. The claimants shall be entitled to enhanced the amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the amount.

Both the appeals are partly allowed in the aforesaid terms.

