
(2019) 03 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 4349 Of 2015

Suninder Kaur And Others

APPELLANT

Vs

Malwa Tourist Pvt. Ltd. And Others

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2019) 03 P&H CK 0092

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Himmat Singh, Tarun Vir Singh Lehal, Sanjeev Bishnoi, Navjot Singh

Final Decision : Allowed

Judgement

Avneesh Jhingan, J

The award dated 12.02.2015 passed by the Motor Accident Claims Tribunal, Ropar (for brevity 'the Tribunal') has been assailed by the parents and minor brother of Arti Devi (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The parents and minor brother of Arti Devi are the appellants. The owner, driver and insurer (i.e. United India Insurance Co. Ltd.) of a bus bearing registration No. PB-29-M-9666 (hereinafter referred to as 'offending vehicle'); have been arrayed as respondents no. 1 to 3 respectively in the appeal. The owner and driver of Xylo Car bearing registration No. PB-01-9037 (hereinafter referred to as 'Xylo Car') have been arrayed as respondents No. 4 and 5, respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 05.09.2013, Arti Devi was waiting for the bus while standing at the Bus Stand, Village Raipur on the left side of Ropar-Nangal road. In the meanwhile, a Xylo car was coming from Nangal side, which was followed by the offending vehicle. The offending vehicle in a rash and negligent manner struck with the Xylo Car from

behind, as a result of which Xylo car struck against Arti Devi and another girl. Both the girls received injuries and Arti Devi died at the spot. FIR was registered against the driver of the offending vehicle.

A claim proceedings under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of Rs.6,63,000/- alongwith interest @ 9% per annum. The amount awarded included Rs.5,000/- for loss of estate and Rs.10,000/- for funeral expenses. In the claim proceedings, it was proved that the deceased was 19 years old and a student of Auxiliary Nurse Midwifery (ANM) Nursing Course at Dial Singh College at Nikkural near Anandpur Sahib. It was also claimed that she was earning Rs.8000/- per month by doing a part time job. Albeit, claimants failed to prove the earning of the deceased, the Tribunal assessed her notional income as Rs.3000/- per month and multiplier of '18' was applied.

Heard learned counsel for the parties and perused the record. Learned counsel for the appellants contends that the Tribunal erred in assessing the notional income of the deceased as Rs.3000/- per month, which is even less than the minimum wages prevalent in the State at the time of accident for an unskilled labourer. His grievance is that no future prospects have been awarded and the amounts awarded under the conventional heads are on lower side.

Learned counsel for the respondents contend that the deceased was only a student of nursing course and the claimants failed to prove the earning of the deceased, as claimed in the claim petition. His grievance is that no deduction for self-expenses has been made.

In the motor vehicular accident cases, the courts are duty bound to award just and equitable compensation as per Section 168 of the Act. This duty becomes more onerous in cases where the deceased is a student, as it is impossible to predict that what the future hold for the deceased. In the present case the deceased was pursuing a professional course of nursing. She was just 19 years old. In such circumstances it would not be appropriate to equate her with an unskilled labourer.

The Supreme Court in "M.R. Krishna Murthi vs. New India Assurance Co. Ltd. and others, Civil Appeal Nos. 2476-2477 of 2019, decided on 05.03.2019, has carved out principles for dealing with the cases where the deceased was a student. It was held as under:-

"23. From the conjoint reading of the aforesaid judgments, inter alia, following principles can be culled out which would be relevant for deciding the instant appeal:

(i) In those cases where the victim of the accident is not an earning person but a

student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the poseer would be: what would have been his income had he joined a service commensurating with the said course. That can be the future earning.

(ii) There may be cases where the victim is not, at that stage, doing any such course to get a particular job. He or she may be studying in a school. In such a case, future career would depend upon multiple factors like the family background, choice/interest of the complainant to pursue a particular career, facilities available to him/her for adopting such a career, the favourable surrounding circumstances to see which would have enabled the claimant to successfully pick up the said career etc.

If the chosen field is employment, then the future earning can be taken on the basis of salary and allowances which are payable for such calling. In case, career is a particular profession, the future earning would depend on host of other factors on the basis of which chances to achieve success in such a profession can be ascertained.

(iii) There may be cases like Deo Patodi where even a student, the claimant would have made earnings on part-time basis or would have received offer for a particular job. In such cases, these factors would also assume relevance.

(iv) After ascertaining the likely earning of the victim in the aforesaid manner, the nature of injuries and disability suffered as a result thereof would be kept in mind while determining as to how much earning has been affected thereby. Here, impact of injuries on functional disability is to be seen. In case of death of victim, it would result in total loss of earning. In the case of injuries, the nature of disability becomes important. Such an exercise was undertaken in N. Manjegowda case."

The Supreme Court held that while assessing the compensation for loss of future earning career prospects has to be looked into, specially keeping in view of the professional course being pursued by the deceased and as to what would be the income if the deceased would have joined the service.

In the case in hand the deceased was pursuing a nursing course.

Having clue from the minimum wages prevalent in the State at the time of accident for a skilled-labourer the monthly income of the deceased is assessed as Rs.8000/-.

As per the decision of the Supreme Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21, ½ deduction for self-expenses is made, as the deceased was a bachelor.

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.

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded in consonance with the decision of the Supreme Court in Pranay Sethi's case (supra). The claimants are entitled to Rs.15000/- each for funeral expenses and for loss of estate.

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

Head

Compensation awarded

(i)

Monthly income

Rs. 8000/- per month

(ii)

Future prospects at 40%

Rs. 3200/-

(iii)

Total Income

Rs. 11,200/- per month

(iv)

Deduction of personal expenses

Rs. 5600/- (i.e. 1/2 of total income)

(v)

Multiplier

18 (as per age of deceased)

(vi)

Loss of income

$5600 \times 12 \times 18 = \text{Rs.} 12,09,600/-$

(vii)

Funeral expenses

Rs.15,000/-

(viii)

Loss of estate

Rs.15,000/-

Total Compensation awarded

Rs.12,39,600/-

The award dated 12.02.2015 is modified to the extent that amount of Rs.6,63,000/- awarded by the Tribunal is enhanced to Rs.12,39,600/-. The appellants shall be entitled to the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the afore-said terms.