
(2018) 12 P&H CK 0151

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 829, 8236 Of 2014 (O&M)

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Santosh And Others

RESPONDENT

Date of Decision : 14-12-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2018) 12 P&H CK 0151

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Varun Mittal, Lalit Kumar, Ashwani Talwar

Final Decision : Disposed off

Judgement

Avneesh Jhingan, J.

The award dated 18.11.2013 passed by the Motor Accident Claims Tribunal, Panchkula has been assailed in two separate appeals, one by the Insurer of car bearing registration No. CH-04E-9563 [hereinafter referred to as 'offending vehicle'] and another by the legal heirs of Ashwani Kumar. The grievance raised in both the appeals is regarding quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. Since both the appeals arise from the same award and same accident, these are being disposed of by a common order.

The brief facts necessary for adjudication of the present appeals are that on 19.08.2011, Ashwani Kumar (deceased) was going from Bus Stand Pinjore to Village Manakpur Devi Lal on foot. On his way, he was hit by a rashly and negligently driven offending vehicle. As a result of the impact, he sustained injuries and was taken to Civil Hospital, Pinjore, where he was declared brought dead by the Doctor. FIR No.168, dated 20.08.2011 was registered at Police Station Pinjore.

A claim petition under Section 166 of Act was filed by widow, two minor children

and mother of the deceased. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the 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 the compensation. The Tribunal awarded a sum of Rs.38,33,000/-alongwith interest @ 7.5% per annum. The said amount included Rs.1,00,000/- for loss of consortium and Rs.25,000/- for funeral expenses.

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

Learned counsel for the insurer contends that the Tribunal erred in awarding 50% future prospects as the deceased was having a fixed salary. He further contends that the amounts awarded under the conventional heads are on the higher side.

Learned counsel for the claimants contends that multiplier of '15' has been wrongly applied as the deceased was 34 years of age at the time of accident.

It is pertinent to note that there is no dispute between the parties with regard to monthly income of deceased as Rs.18,300; 1/4th deduction made for self-expenses and to the fact that deceased was drawing a fixed salary.

Having due regard to the decisions of the Supreme Court in cases of ational 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 are also entitled to Rs.15,000/- each for funeral expenses and loss of estate. Rs.40,000/- is awarded to the widow for loss of consortium.

The age of the deceased was taken by the Tribunal as about 35 years. 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 '16' is to be applied as the deceased was in the age group of 31-35. In paragraph 20 of the award, the Tribunal itself recorded the finding that the deceased was proved to be 34 years old. Thus, the compensation shall be re-calculated by applying multiplier of '16'.

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

PARTICULARS

Amount (in Rs.)

Annual income of the deceased assessed

2,19,600/-

40 % Future Prospects

87,840/-

Sub Total

3,07,440/-

1/4th deduction for self expenses

76,860/-

Annual Dependency

2,30,580/-

Applying multiplier of '16'

36,89,280/-

Funeral Expenses

15,000/-

Loss of Estate

15,000/-

Loss of consortium to widow

40,000/-

Grand Total

37,59,280/-

The award dated 18.11.2013 is modified to the extent that amount of Rs.38,33,000/- awarded by the Tribunal is reduced to Rs.37,59,280/-.

While issuing notice of motion in the appeal filed by the insurer, disbursement of compensation beyond Rs.35,00,000/- was stayed. The claimants shall be entitled to the balance amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

Both the appeals stand disposed of in the aforesaid terms.