(2019) 03 P&H CK 0204

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 1076 Of 2003 (O&M)

Veerpal Kaur And Others APPELLANT

Vs

Kulwant Singh And Others RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Citation : (2019) 03 P&H CK 0204

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Ashok Jindal, R.C. Gupta

Final Decision : Allowed

Judgement

Avneesh Jhingan, J

The present appeal is against award dated 22.11.2002 passed by the Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as 'the Tribunal'). The appellants are widow, minor son, widowed mother, one minor brother and a sister. Respondents are driver, owner and insurer (i.e. National Insurance Company Ltd.) of Truck bearing registration No.RJ-31-G-0407 (for short 'offending vehicle').

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The brief facts necessary for adjudication of the present appeal are that on 20.10.2001 Baltej Singh alongwith Sukhmander Singh and Gurtej Singh was going on a scooter bearing registration No.PB-56-8355. On the way, the scooter was hit by the offending vehicle near village Jalal. As a result of the impact, both the riders of the scooter sustained injuries. Baltej Singh was removed to Civil Hospital, Bhagta Bhai Ka, from where he was referred to C.M.C. Ludhiana, where he succumbed to injuries. FIR no. 77 dated 20.10.2001 was registered at Police

Station Dialpura.

In the claim petition, it was pleaded that the deceased was 23 years old at the time of accident and was learning photography. His income was claimed as Rs. 4000/-. But the claimants failed to prove the occupation and earning of the deceased and the Tribunal assessed the monthly earning as Rs. 2400/-, 1/3rd deduction for self-expenses was made and multiplier of 16 was applied. The Tribunal awarded a sum of Rs. 3,07,200/-along with interest at the rate of 9% per annum.

Learned counsel for the appellants contends that no future prospects have been awarded and multiplier of 16 has wrongly been applied instead of 18. It is argued that the deceased was survived by more than four dependants, therefore, 1/4th deduction for self-expenses should have been made. He further prays that amounts under 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 insurer defends the award and resists any further enhancement. He argues that the sister was 19 years old and brother was 16 years old and they should not be treated as dependant on the earning of the deceased.

The contention raised by learned counsel for the appellants deserves acceptance.

Having due regard to the decisions of the Supreme Court in Pranay Sethi's case (supra) and Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480 as the deceased was below 40 years of age and would fall in the category of self-employed or fixed salary, 40% future prospects are awarded.

The deceased was the only earning member of his family as is evident from the memo of parties. Apart from the minor children, there was widowed mother and a sister of 19 years and brother, who was minor i.e. 16 years old, in such circumstances, it cannot be expected that while having such a large family he would be spending 1/3rd for his self-expenses and as per the decision of the Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21 1/4th deduction for self-expenses is made. The deceased was 23 years of age and considering the age of the deceased as per the Supreme Court decision, multipler of 18 is to be applied.

The claimants are also entitled to Rs. 15,000/- each for funeral expenses. Rs. 40,000/- are awarded to the widow for loss of consortium.

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

Sr. No.

Particulars

Amount awarded

1.

Monthly income

Rs. 2400/-

2.

40% future prospects Total-

Rs. 960/- Rs. 3360/-

3.

1/4th deduction for selfexpenses

Rs. 840/-

4.

Multiplier of 18 (2520x18x12)

Rs. 5,44,320/-

5.

Conventional heads

Rs. 70,000/-

6.

Total

Rs. 6,14,320/-

The award dated 22.11.2002 is modified to the extent that amount of Rs. 3,07,200/- awarded by the Tribunal is enhanced to Rs. 6,14,320/-.

The claimants shall be entitled to enhanced amount alongwith interest at the rate of 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 aforesaid terms.

