(2018) 12 P&H CK 0150

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 4811 Of 2014

Yadwinder Singh And Another — APPELLANT

Vs

Bhima And Others — RESPONDENT

Date of Decision : 14-12-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2018) 12 P&H CK 0150

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Sahil Abhi, Sonia Rani, Sanjeev Goyal,

Final Decision : Partly Allowed

Judgement

Avneesh Jhingan, J .

The award dated 08.01.2014 passed by the Motor Accident Claims Tribunal, Ludhiana [for brevity 'the Tribunal'] has been assailed by the husband and minor son of Kuldeep Kaur seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver of truck bearing registration No. PB-65H-7854 [hereinafter referred to as 'offending vehicle'], owner and insurer [i.e. Bharti Axa General Insurance Co. Ltd.] of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

Respondents No.1 and 2 did not put in appearance inspite of service and were proceeded ex-parte vide order dated 20.10.2015. The facts emanating from the record are that on 10.08.2011, Kuldeep Kaur, aged 39 years, was driving her Moped bearing registration No. PB-26C-5765. On her way, near Post Office situated at G.T. Road, her Moped was struck by a rashly and negligently driven offending vehicle, as a result of the impact, she fell down and was ran over by the offending vehicle. She died at the spot. FIR No.139, dated 10.08.2011 was registered at Police Station City Khanna.

A claim petition under Section 166 of the Act was filed. 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 driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of Rs.17,75,000/- alongwith interest @ 7.5% per annum. The said amount included Rs.1,00,000/- for loss of consortium, Rs.30,000/- for loss of care and guidance of minor children and Rs.25,000/- for funeral expenses.

In the claim petition it was claimed that the deceased was a Beautician by profession and used to visit houses of people for her work, her Income Tax Return was exhibited. The Tribunal after considering the Income Tax Return assessed monthly earning of the deceased as Rs.12,000/-. 50% future prospects were awarded, ½ deduction for self-expenses was made and multiplier of '15' was applied.

Heard learned counsel for the parties, perused the paper book and the record.

Learned counsel for the appellants contends that the deceased was survived by husband and minor child. The Tribunal erred in making ½ deduction for self-expenses instead of 1/3rd. His grievance is that no compensation for loss of estate has been granted.

Learned counsel for the insurer defended the award. She argues that the amount awarded for loss of consortium and funeral expenses are on the higher side and no amount should be granted for loss of care and guidance to the minor child.

There is no dispute between the parties with regard to income assessed and multiplier applied.

The contentions raised by learned counsel for the parties deserve acceptance. The deceased was survived by husband and minor child. In consonance with decision of the Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21, 1/3rd deduction for self-expenses is made.

The deceased was 39 years old and was working as a Beautician. Having due regard to the decisions of the 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, 40% future prospects are to be awarded instead of 50%. The claimants are also entitled to Rs.15,000/- each for funeral expenses and for loss of estate. Rs.40,000/- is awarded to the husband for loss of consortium.

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

PARTICULARS

AMOUNT (IN Rs.)

Monthly income of the deceased assessed

12,000/-

Sub Total

16,800/-

1/3rd deduction for self expenses

5,600/-

Monthly Dependancy

11,200/-

Annual Dependancy

1,34,400/-

Applying multiplier of 15

20,16,000/-

Funeral Expenses

15,000/-

Loss of Estate

15,000/-

Loss of consortium to husband

40,000/-

Grand Total

20,86,000/-

The award dated 08.01.2014 is modified to the extent that amount awarded of Rs.17,75,000/- by the Tribunal is enhanced to Rs.20,86,000/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

