

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

XOBJC-65-CII-2013 in/and
FAO-6789-2011 (O&M)
Date of decision: 15.12.2017

Mazidan and another

.... Appellants

Versus

Mazid and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Ashish Gupta, Advocate
for the appellants.

Mr.S.K.Bawa, Advocate
for the respondents No.1 to 3/cross-objectors.

Mr.Sanjiv Pabbi, Advocate
for respondent No.4-Insurance Company.

Avneesh Jhingan, J.

XOBJC-65-CII-2013

Learned counsel for the cross-objectors prays that he may be permitted to withdraw the cross-objections so that he can avail his remedies available under the law.

Dismissed as withdrawn as prayed for.

FAO-6789-2011

The present appeal has been filed against the award dated 27.08.2011 passed by Motor Accidents Claims Tribunal, Fast Track Court, Nuh (hereinafter referred to as the 'Tribunal').

In an unfortunate accident that occurred on 29.03.2009, Irshad, aged 18 years, lost his life and Usman, Sahil, Abdul Rehman @ Shamsheer, Rizwan and

Umar Mohd. suffered injuries. The deceased and the injured were occupants of the Maruti Van bearing registration No.HR-05G-3085. The said van was struck by a rashly and negligently driven tractor bearing registration No.HR-28-A-5769 (for short, 'the offending vehicle'). FIR No.110 of 2009 was registered at Police Station Hodal.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by legal heirs of the deceased. The Tribunal awarded a sum of Rs.3,29,000/- along with interest @ 6% per annum.

I have heard learned counsel for the parties and perused the paper book and record.

The parties have not disputed the facts regarding involvement of the offending vehicle, rash and negligent driving of the offending vehicle, multiplier applied and deduction made for self expenses

Learned counsel for the appellants has argued that the Tribunal erred in assessing monthly earning of the deceased as Rs.3,000/-as even the minimum wages prevalent at that time were more. He further contended that no future prospects have been awarded. His grievance is that amount awarded for funeral expenses is on the lower side and no amount is awarded for loss of estate.

Learned counsel for the Insurance Company has argued that minimum wages prevalent at the time of accident was around Rs.3700/-. Though he resisted the enhancement but could not raise any serious issue in view of the decision of the Hon'ble Apex Court in **National Insurance Company Ltd. vs. Pranay Sethi and Ors. in SLP (Civil) No.25590 of 2014 decided on 31.10.2017.**

The contention of learned counsel for the appellants is accepted that at least minimum wages should have been considered while calculating the loss of dependency.

The contention raised by learned counsel for the appellants deserves acceptance in the view of the latest decision of the Hon'ble Apex Court in National Insurance Company Ltd.'s case (supra) and Hem Raj Vs. Oriental Insurance Company Ltd., in Civil Appal No. 19603 of 2017, decided on 22.11.2017. The Hon'ble Apex Court has held that where the deceased was below 40 years of age and self employed or having fixed salary, 40% future prospects are to be awarded. It has further been held that under conventional heads Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses should be awarded.

In view of the above discussion, there is no dispute of deduction of self expenses and the multiplier applied, the compensation is recalculated as under :-

Annual income	Rs.3700x12=Rs.44,400/-
Add 40% future prospects	Rs.17,760/-
Total income	Rs.62,160/-
One half deduction for self expenses	Rs.31,080/-
Dependency	Rs.31,080/-
Applying multiplier of 18	Rs.5,59,440/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Total	Rs.5,89,440/-

The award dated 27.08.2011 passed in MACT Case No.191 of 09.06.2009 is modified to the extent that the amount awarded by the Tribunal of Rs.3,29,000/- is enhanced to Rs.5,89,440/-.

The claimants would be entitled to enhanced amount along with

interest @ 6% per annum from the date of filing the claim petition till the
realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

15.12.2017

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1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No