

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

**FAO No. 7203 of 2011 (O&M)
Date of Decision:- 07.12.2017**

Kamla Devi & Anr.

....Appellants

Versus

Jayant & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Sushil Jain, Advocate, for the appellants.

Mr. Arun Sharma, Advocate, for
Mr. T.K. Joshi, Advocate,
for respondent No.3- Insurance Co.

AVNEESH JHINGAN, J. (Oral)

Present appeal has been filed against award dated 30.07.2011 passed by Motor Accident Claims Tribunal, Sonapat (for short, 'the Tribunal').

In a motor vehicular accident that occurred on 23.04.2010, Jagat Narain, aged 25 years, lost his life. In the said accident the offending vehicle was tractor bearing registration No. HR-10L-5011. FIR No. 110, dated 23.04.2010 was registered at Police Station Kharkhoda.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of the deceased. The Tribunal after appreciating the facts and considering the evidence produced awarded a sum of Rs.8,36,000/- along with interest @7.5% per annum. The said amount included a sum of Rs.5,000/- for funeral expenses and Rs.7500/- each for loss of estate and loss of consortium.

The present appeal has been filed for enhancement of the compensation.

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

There is no dispute raised on the facts by either of the parties with regard to involvement of the offending vehicle, rash and negligent driving of the offending vehicle and calculation of loss of dependency.

Learned counsel for the appellants argued that no future prospects have been added by the Tribunal while awarding the compensation for loss of dependency. He further argued that the amounts awarded under conventional heads are on the lower side.

Learned counsel for the insurance company has argued that income was assessed on estimated basis and there was no established income and therefore, no future prospects should be awarded. He resisted any further enhancement of compensation under conventional heads.

The contentions raised by learned counsel for the appellants deserve acceptance in view of the law laid down by the Hon'ble Apex Court in **National Insurance Co. Ltd. Vs. Parney Sethi, SLP (Civil) 25590 of 2014,** decided on 31.10.2017 and in case of **Hem Raj Vs. Oriental Insurance Company Ltd, in Civil Appal No. 19603 of 2017, decided on 22.11.2017.**

Hon'ble Apex Court in **National Insurance Co. Ltd.** (Supra) has held that where the deceased was having a fixed salary and was below 40 years, 40% future prospects should have been awarded. It has further been held that Rs.70,000/- (i.e. Rs.15,000/- for loss of funeral expenses,

Rs.15,000/- for loss of estate and Rs.40,000/- of loss of consortium) is to be awarded under the conventional heads.

In case of *Hem Raj Vs. Oriental Insurance Company Ltd.* (Supra) the Hon'ble Apex Court has held that even where the income is assessed on the basis of minimum wages prevalent at the time of accident even in such cases future prospects have to be added.

Since there is no dispute with regard to loss of dependency as calculated by the Tribunal, 40% future prospects on the said amount is awarded as under:-

$$\text{Rs.8,16,000/-} \times 40\% = \text{Rs.3,26,400/-}$$

The amounts already awarded by the Tribunal under the conventional heads are enhanced to Rs.70,000/- in consonance with the decision of Hon'ble Apex Court in *National Insurance Co. Ltd.* (Supra).

The award dated 30.07.2011 is modified to the extent that the amount awarded of Rs.8,36,000/- awarded by the Tribunal is enhanced by Rs.3,76,400/-.

The claimants would be entitled to the enhanced amount along with interest @6% per annum from the date of filing of the claim petition till realisation.

The appeal is partly allowed in the aforesaid terms.

December 07, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No