

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

FAO No. 4617 of 2015 (O&M)

Date of Decision:- 18.12.2017

Khem Chand & Anr.

.... Appellants

Versus

Ram Ashrey & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Ms. Deepa Jain, Advocate, for
Mr. Yash Dev Kaushik, Advocate, for the appellants.

Mr. Suvir Diwan, Advocate, for insurance company

AVNEESH JHINGAN, J. (Oral)

The present appeal has been preferred against the award dated 12.02.2015, passed by Motor Accident Claims Tribunal, Faridabad (for short, 'the Tribunal').

The appeal has been filed by the claimants for enhancement of compensation.

In a motor vehicular accident that occurred on 15.09.2013, Ajay Kumar, aged 28 years lost his life. He was waiting for a bus and was struck by a rashly and negligently driven truck bearing registration No. HR-38J-9732. He died on his way to the hospital. FIR No. 716, dated 15.09.2013 was registered at Police Station Sector -7, Faridabad.

In a claim petition filed by the claimants under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the Tribunal awarded a sum of Rs.5,10,000/- along with interest @7.5% per annum.

I have heard learned counsel for the parties; perused the paper-

book and the relevant documents produced by them.

Learned counsel of the appellants argued that the Tribunal erred in assessing the monthly earning of the deceased as Rs.5,000/- as even the minimum wages prevalent in State of Haryana at the time of accident was Rs.5341/-. She argued that no future prospects have been awarded. Her grievance is that no amount has been awarded for loss of estate and funeral expenses.

Learned counsel for the insurance company defended the award and argued that the claimants failed to establish occupation and earning of the deceased. He further argued that once there was no established income, no future prospects should be awarded. He could not raise any serious objection with regard to awarding of the conventional heads.

Even in the cases where the earning of the deceased is not proved, the safest yardstick is to rely upon the minimum wages prevalent in the concerned State at the time of accident.

In the present case, there is no dispute that the minimum wages were Rs.5341/- per month. The compensation would be recalculated in view of the minimum wages.

The contention raised by learned counsel for the appellants for future prospects and conventional heads is duly covered by the Hon'ble Apex Court in **National Insurance Co. Ltd. Vs. Parney Sethi, SLP (Civil) 25590 of 2014**, decided on 31.10.2017

Hon'ble Apex Court in **National Insurance Co. Ltd.** (Supra) has held that where the deceased was below 40 years of age; self-employed or having a fixed salary, 40% future prospects should be awarded. It has

been held that Rs.15,000/- is to be awarded for funeral expenses and Rs.15,000/- for loss of estate.

In case of *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 even where 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.

In view of the reasons mentioned above and the case law cited the amount is recalculated as under:-

Monthly income	=	Rs.5,341/-
Annual Income	=	Rs. 64,092/-
40% addition towards future prospects		
Rs.64,092 + Rs.25,636/-	=	Rs.89,728/-
50% deduction towards personal expenses		
Annual dependency	=	Rs.44,864/-
Multiplier applied	=	17
Loss of dependency	=	Rs.7,62,688/-
Loss of estate	=	Rs.15,000/-
Funeral expenses	=	Rs.15,000/-
Total compensation	=	Rs.7,92,688/-

The award dated 12.02.2015 is modified to the extent that the amount awarded of Rs.5,10,000/- awarded by the Tribunal is enhanced to Rs.7,92,688/-.

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 18, 2017
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(AVNEESH JHINGAN)
JUDGE

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