

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

FAO No. 1725 of 2017 (O&M)

Date of Decision:22.12.2017

Sadhna Pandey and others

.....Appellants

Versus

Shyam Sunder Dhanka and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Arvind Kumar Yadav, Advocate
for the appellants.

Mr. Puneet Jain, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.

The present appeal is against the award dated 5.4.2016 passed by the Motor Accidents Claims Tribunal, Rewari (for short 'the Tribunal').

On 6.5.2015 Raj Kumar Pandey aged 25 years was driving his motor cycle bearing registration No. HR-26-BA-6996 on National Highway No.8 in the area of HSIDC-Bawal. A rashly and negligently driven truck bearing registration No. RJ-32-GB-1127 (for short 'the offending vehicle') struck his motor cycle from behind. As a result of the accident Raj Kumar Pandey, fell on the road and was crushed under the front tyre of the truck. He died on his way to the hospital. FIR No. 139 dated 6.5.2015 was registered at Police Station Kasola.

In claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the tribunal'), the Tribunal awarded a sum of Rs.27,65,200/- alongwith interest at the rate of 6% per annum. The said amount awarded included Rs.25,000/- on account of funeral expenses, Rs.5000/- for loss of estate and Rs.1,00,000/- towards loss of consortium.

The present appeal has been filed for enhancement of compensation.

I have heard learned counsel for the parties and perused the paper book and the relevant documents produced by them.

Learned counsel for the appellants argued that the Tribunal erred in relying upon the basic salary of the deceased. His contention is that the salary slip was duly exhibited as PW3/B and proved also. As per the salary slip, he was earning salary of Rs.28,220/-. He further argued that no future prospects have been awarded.

Learned counsel for the Insurance Company contended that basic salary only is to be considered. Learned counsel for the Insurance Company also argued that conveyance allowance, uniform allowance, education allowance and telephone allowance should not be added. He has no objection if the basic salary and HRA are considered i.e. Rs.25,620/-. He further argued that the amount awarded for funeral expenses and loss of consortium are on the higher side.

Learned counsel for the appellants has no objection even if the monthly salary is taken as Rs.25,600/- The compensation would be recalculated taking the monthly salary of the deceased as Rs.25,600/-.

Either of the parties have not disputed the facts regarding

involvement of the offending vehicle, rash and negligent driving of the offending vehicle, age of the deceased, multiplier applied and deduction made for self expenses.

The contention raised by learned counsel for the appellants that the Tribunal erred in relying upon the basic salary rather than the gross salary, deserves acceptance in view of decision of Hon'ble the Apex Court in **Manasvi Jain Versus Delhi Transport Corporation, 2014 (13) SCC 22.**

It has been held that gross monthly salary less income tax should be considered for calculating the compensation.

In the present case, during the relevant assessment year monthly earning of the deceased would not come within the ambit of Income Tax, if the deductions available under the Income Tax Act, 1961, are allowed. No income tax is payable on the salary received by him at the time of accident.

The contention raised by learned counsel for the appellants that future prospects should be awarded deserves acceptance in view of decision of Hon'ble the Apex Court in **National Insurance Company Limited Versus Pranay Sethi and others Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017.**

In the present case, it has come on record that the deceased was having a permanent employment. He was receiving allowances and pay structure given in the salary certificate establish that he was having a permanent job. In such circumstance, 50% future prospects should be awarded as per decision of Hon'ble the Apex Court in **Pranay Sethi's case (supra).**

The contention raised by learned counsel for the Insurance

Company that the amounts awarded for conventional heads be made in consonance with the decision of Hon'ble the Supreme Court in **Pranay Sethi's case (supra)** is accepted.

Hon'ble Apex Court in **Pranay Sethi's case (supra)** has held that Rs.70,000/- has to be awarded under convention heads.

The amounts of Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses are awarded in consonance with the decision of Hon'ble the Apex Court.

For the reasons mentioned above and in view of the case law cited above, the amount of compensation is recalculated as under:

Monthly income	Rs.25,600/-
Annual earning	Rs.25,600 x 12
	Rs.3,07,200/-
50 % future prospects	Rs.1,53,600/-
Total	Rs.4,60,800/-
1/3 rd deduction	Rs.1,53,600/-
Dependency	Rs.3,07,200/-
Multiplier of 18	Rs.55,29,600/-
Conventional heads	Rs. 70,000/-
Total	Rs.55,99,600/-

Accordingly, the award dated 5.4.2016 is modified to the extent that the amount awarded of Rs.27,65,200/- is enhanced to Rs. 55,99,600/-.

The claimants would be entitled to enhanced amount alongwith interest at the rate of 6%per annum from the date of filing of the claim peition till realization of the amount.

The appeal is accordingly partly allowed in the aforesaid terms.

22.12.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No