

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

FAO No. 2538 of 2017 (O&M)

Date of Decision:- 11.12.2017

Babu Lal & Ors.

....Appellants

Versus

Sharwan Singh & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Govind Rana, Advocate, for the appellants.

Mr. Rajesh Arora, Advocate, for respondent Nos. 1 and 2.

Mr. Rajesh K. Sharma, Advocate, for respondent No.3.

AVNEESH JHINGAN, J. (Oral)

Present appeal has been filed against award dated 12.09.2016 passed by Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal').

A motor vehicular accident occurred on 08.08.2015. The deceased – Sita Ram Saini, aged 19 years was travelling in a three-wheeler bearing registration No. HR-55R-3832. The said three wheeler was being driven in a rash and negligent manner and it struck against a road side divider near Aggarwal Dharamshala and turned turtle. Sita Ram Saini suffered grievous injuries and was taken to government hospital, Gurgaon from where he was referred to Safdarjang Hospital, Delhi. He succumbed to his injuries on 10.08.2015. FIR No. 681 of 2015 was lodged at Police Station Civil Lines, Gurgaon.

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 facts and considering the evidences produced, awarded compensation to the tune of Rs.15,33,000/- along with interest @9% per annum. The said amount awarded included a sum of Rs.25,000/- for funeral expenses and Rs.50,000/- on account of loss of love and affection.

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

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

Learned counsel for the appellants argued that the deceased was working as supervisor with M/s Sunrise Services, Gurgaon and was earning Rs.12,606/- per month. He contended that the salary of the deceased was proved by the salary record Exhibited as P/9 and P/10. The said record was proved by deposition of Krishan S/o Mamman Singh, PW-3. His grievance is that the Tribunal wrongly assessed the salary of the deceased as Rs.9000/- per month. He further contended that no amount has been awarded for loss of estate.

Learned counsel for the insurance company on the other hand argued that excess amount has already been awarded for future prospects. He contended that the amount awarded for funeral expenses is on the higher side and no amount could had been awarded for loss of love and affection. He also contended that the learned Tribunal rightly took the salary as Rs.9,000/- per month as he was employed on contractual basis.

The contention of learned counsel for the appellants qua salary of

the deceased deserves acceptance. The Tribunal while passing the award in para 23 of the award had concluded that it was proved that the deceased was drawing the salary of Rs.12,000 per month. The said salary was reduced to Rs.9,000/- merely on the basis that the deceased was on contractual basis. That cannot be a basis to ignore the proved earning of the deceased. The loss of dependency would be recalculated after taking salary of the deceased as Rs.12,606/- as proved on record.

The contention of learned counsel for the appellants deserves acceptance that no amount has been awarded for loss of estate. At the same time, the contention raised by learned counsel for the insurance company will have to be considered, that the future prospects added are on the higher side and no amount should have been awarded for loss of love and affection and the amount awarded for funeral expenses is on the higher side.

The contention raised by learned counsel for the insurance company is squarely covered by the latest decision of Hon'ble Apex Court in **National Insurance Co. Ltd. Vs. Parney Sethi, SLP (Civil) 25590 of 2014**, decided on 31.10.2017. In the said case, it has been held that where a person is self-employed or on a fixed salary and below age of 40 years, 40% future prospects should have been awarded. It has further been held that no amount is to be awarded for loss of love and affection. The Hon'ble Apex Court has held that Rs.15,000/- is to be awarded for funeral expenses and Rs.15,000/- for loss of estate.

Learned counsel for the appellants stated that he has no objection if future prospects and amount under conventional heads are awarded as per the Supreme Court decision in **National Insurance Co. Ltd.**' case (Supra).

Since in the present case the compensation is being recalculated in order to arrive at just and equitable compensation, the same is being recalculated in view of the latest decision of the Hon'ble Apex Court in **National Insurance Co. Ltd.** (Supra).

The compensation is recalculated as under:-

Income of the deceased	=	Rs. 12,606/- per month
Added future prospects of deceased 40%		
Rs.12606 + 5042	=	Rs.17,648/-
1/2 deduction	=	Rs.8,824/-
Applied multiplier of 18		
Rs.8,824/- x 12 x 18	=	Rs.19,05,984/-
Funeral expenses	=	Rs.15,000/-
Loss of estate	=	Rs.15,000/-
Total	=	Rs. 19,35,984/-

The award dated 12.09.2016 is modified to the extent that the amount awarded of Rs.15,33,000/-awarded by the Tribunal is enhanced to Rs. 19,35,984/-.

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 11, 2017
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(AVNEESH JHINGAN)
JUDGE

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