

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

FAO No.4450 of 2003 (O&M)
Date of decision: 19.01.2018

Surjit Kaur and others

.... Appellants

Versus

Balkar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.H.S.Thiara, Advocate
for the appellants.

Mr. Ashwani Gaur, Advocate
for respondent No.1.

Mr.Pradeep Goyal, Advocate
for respondent No.4-Insurance Company.

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 06.09.2002 passed by Motor Accidents Claims Tribunal, Hoshiarpur (hereinafter referred to as 'Tribunal').

The record of this case was burnt and has been reconstructed from the salvaged record and copies supplied by counsels, subject to all just exceptions.

On 11.12.1999, Balwant Singh, aged about 40 years, was going on his scooter bearing registration No.PB-07-C-8984. His minor son Joginder Singh was the pillion rider on the scooter. The said scooter was

hit by rashly and negligently driven truck bearing registration No.PBR-241 (for short, 'the offending vehicle'). As a result of the accident, both father and son suffered grievous injuries. Joginder Singh died on the spot and Balwant Singh lost his life on his way to the hospital.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the widow and two children of the deceased.

The Tribunal awarded a sum of Rs.2,50,000/- along with interest @ 9% per annum.

The appeal has been filed for enhancement of the compensation.

The deceased was allegedly working as a coolie on a bus stand. It was alleged that he was earning Rs.7,000/- to Rs.8,000/- per month. In support of the claim, the identity card issued to him was exhibited as A2. The claimants, however, failed to adduce any evidence with regard to the monthly earning of the deceased. No colleagues were examined. The witness, who appeared as AW2 to prove the identity card, was not in a position to make any statement about the monthly earning of the deceased. In such circumstances, the Tribunal assessed the income as Rs.2100/- per month treating him to be a daily wager. The said amount is already more than the minimum wages prevalent for unskilled labourer at the time of the accident. A deduction of 1/3rd was made for self expenses which was in accordance with the decision of the Hon'ble Apex Court in **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R.**

(Civil) 77 wherein it has been held that if the deceased is survived by 2 to 3 dependants, 1/3rd deduction should be made.

There is no dispute with regard to the age of the deceased i.e. about 40 years and the multiplier of 15 has rightly been applied. No future prospects were awarded by the Tribunal and no amount of compensation was given under the conventional heads.

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** 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 the amount of Rs.70,000/- is to be awarded under the conventional heads i.e Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium.

In the present case, the age of the deceased was about 40 years and hence he be treated as below 40 years.

The Hon'ble Apex Court in **Hem Raj vs. Oriental Insurance Company Ltd. in Civil Appeal No.19603 of 2017, decided on 22.11.2017** has held that 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.

Keeping in view the above discussion, since there is no dispute on the loss of dependency calculated by the Tribunal of Rs.2,50,000/-, future prospects 40% are awarded i.e. Rs.1,00,000/-. Further, Rs.70,000/- i.e Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and

Rs.40,000/- for loss of consortium are awarded under the conventional heads.

The award dated 06.09.2002 is modified to the extent that the amount awarded by the Tribunal of Rs.2,50,000/-is enhanced by Rs.1,70,000/-.

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

19.01.2018
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1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No