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

**FAO No. 1754 of 2008 (O&M)
DECIDED ON: NOVEMBER 28, 2018**

**SONU AND OTHERS**

**.....APPELLANTS**

**VERSUS**

**DEEPAK MALHOTRA AND OTHERS**

**.....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.**

Present: Mr. Shilak Ram Hooda, Advocate
for the appellants.

Mr. R.C. Gupta, Advocate
for respondent No.3-Insurance Company

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**AVNEESH JHINGAN, J (ORAL)**

With the consent of both the parties, the main case is taken up for hearing. The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

2. The widow, two minor sons and mother of Ram Kumar (deceased) are in appeal against the award dated 01.03.2007 passed by Motor Accident Claims Tribunal, Sonepat (for short 'the Tribunal') in MACT Case No. 114 of

2004. The appeal has been filed seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

3. The driver and insurer of Santro car bearing registration No. HR-10G-1122 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents.

4. The brief facts necessary for adjudication of the present appeal are that on 26.09.2004, Ram Kumar (deceased) alongwith his friends Rajbir, Suresh and Ramesh was going on motorcycle bearing registration No. HR-10C-7317 from Sonepat, to Village Kumaspur. When they reached near Murthal road, Sonepat their motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Ram Kumar fell down and he was dragged to some distance by the offending vehicle, he died at the spot. FIR No. 156, dated 27.09.2004, under Sections 304-A, 279, and 337 of the Indian Penal Code was registered at Police Station Sadar, Sonepat.

6. The legal heirs of Ram Kumar (deceased) filed a claim petition under Section 166 of the Act before the Tribunal.

7. The Tribunal after considering the facts and appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The Tribunal awarded a compensation to the tune of ₹2,70,000/- alongwith interest @6% per annum. The amount awarded included ₹ 6000/- for funeral expenses.

8. Heard learned counsel for the parties and perused the paper book.

9. Learned counsel for the appellants raised four issues. Firstly, that the

deceased was 50 years old and multiplier of 11 has wrongly been applied; Secondly, the deceased was survived by four dependants and Tribunal erred in making 1/3 deduction for self expenses; Thirdly, no future prospects have been awarded and lastly, the amount awarded under the conventional heads are on lower side.

10. Learned counsel for the insurer defended the award and argued that no cogent evidence was adduced to substantiate that the deceased was 50 years old at the time of accident.

11. The contentions raised by learned counsel for the appellants deserve acceptance.

12. There is no dispute between the parties with regard to the income of the deceased assessed by the Tribunal as ₹ 3,000/-.

13. The deceased was 50 years old at the time of accident, as per the post mortem report. Since there was no documentary evidence to prove the age of the deceased, the Tribunal was right in taking the age of deceased as per post mortem report. Keeping in view the facts and circumstances of the case, it is considered that the deceased was in the age group of 40 to 50. In consonance with the decision of the Supreme Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another; 2009 ACJ 1298 (SC) ,*** multiplier of 13 is applied. The deceased was survived by four dependants, hence, ¼th deduction is made for self expenses.

14. In view of the decisions of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others;*** ***2017 (4) RCR (Civil) 1009*** and *Hem Raj vs. Oriental Insurance Company* Ltd ;2018 (2) PLR 480, 25% future prospects

are awarded. Claimants are entitled to a sum of ₹15,000/- each, for funeral expenses and for loss of estate. Further ₹40,000/- is awarded to the widow of the deceased for loss of consortium.

15. In view of afore-said discussion, the compensation is recalculated as under:

| | **Head** | **Compensation awarded** |
|---|---|---|
| (i) | Income | ₹3,000/- per month (assessed by the Tribunal) |
| (ii) | Future prospects at 25% | ₹750/- per month |
| (iii) | Total Income | ₹3750/- per month |
| (iv) | Deduction of personal expenses | ₹938/- (i.e. 1/4th of total income) |
| (v) | Multiplier | 13 (as per age of deceased) |
| (vi) | Total Dependency | ₹2812x12x13=₹4,38,672/- |
| (vii) | Funeral expenses | ₹15,000/- |
| (viii) | Loss of estate | ₹15,000/- |
| (ix) | Loss of consortium | ₹40,000/- |
| | Total Compensation awarded | ₹5,08,672/- |

16. The award dated 01.03.2007 is modified to the extent that amount of ₹2,70,000/- awarded by the Tribunal is enhanced to ₹5,08,672/-. The appellants shall be entitled to enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of amount.

17. The appeal is partly allowed in the afore-said terms.

**(AVNEESH JHINGAN)**
**JUDGE**

**NOVEMBER 28, 2018**
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***Whether speaking/reasoned Yes/No***
***Whether reportable Yes/No***