

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

**FAO No. 525 of 2005 (O&M)
DECIDED ON: DECEMBER 06, 2018**

SMT. DULARI AND OTHERS

.....APPELLANTS

VERSUS

RANBIR SINGH & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. R.S. Mamli, Advocate
for the appellants.

Mr. Pardeep Goyal, Advocate
for respondent-Insurance Company.

AVNEESH JHINGAN, J (ORAL)

The award dated 28.10.2004 passed by Motor Accident Claims Tribunal, Kurukshetra (for short 'the Tribunal') has been assailed by the legal heirs of Gurdial Singh (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

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.

The widow and two minor sons of Gurdial Singh (deceased) are the

appellants. The driver-cum-owner of truck bearing registration No. HR-46-A-6497 (hereinafter referred to as 'offending vehicle'), insurer of the offending vehicle i.e. New India Assurance Company Ltd; owner of Maruti Van bearing registration No. HP-51-2778 (hereinafter referred to as 'Van') and insurer of van i.e. New India Assurance Company Ltd. have been arrayed as respondents No.1 to 4 respectively in the appeal.

The brief facts necessary for the adjudication of the present appeal are that on 13.12.2003, Gurdial Singh alongwith his friend Sham Lal and Balwant Singh was going to village Kailash, District Karnal. They were travelling in a van which was being driven by Sham Lal. The offending vehicle was parked on the road, without any indicator or sign, consequently, the driver of the van was not able to see the truck and rammed into the truck from behind. As a result of the impact, Gurdial Singh received grievous injuries and died at the spot. FIR was registered.

The legal heirs of Gurdial Singh (deceased) filed a claim petition under Section 166 of the Act before the Tribunal. The Tribunal after considering the facts and appreciating the evidence adduced, held that there was contributory negligence of the drivers of offending vehicle and that of the van in the ratio of 75:25. The Respondents No.1 to 4 were held jointly and severally liable to pay the compensation in the ratio of 75:25. The Tribunal awarded a compensation to the tune of ₹3,56,000/- alongwith interest @9% per annum. The amount awarded included ₹11,000/-under the conventional heads. The age of the deceased was taken by the Tribunal as 35 years. The Tribunal assessed the income of the deceased as ₹2700/- per month, 1/3rd deduction for self-

expenses was made and multiplier of 16 was applied.

Heard learned counsel for the parties, perused the paper book and relevant documents produced by learned counsel for the parties.

Learned counsel for the appellants contends that no future prospects have been awarded and the amount awarded under the conventional heads are on the lower side. No other issue has been raised by learned counsel for the appellants.

Learned counsel for the insurer defended the award and resisted any further enhancement.

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

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; 40% future prospects are awarded. Claimants are also entitled to a sum of ₹15,000/- each, for funeral expenses and for loss of estate. Further an amount of ₹40,000/- is awarded to the widow for loss of consortium.

There is no dispute between the parties with regard to the loss of dependency calculated by the Tribunal as ₹3,45,600/-, 40% of the said amount is awarded as future prospects i.e. ₹1,38,240/-. The amount awarded under the conventional heads is enhanced by ₹59,000/-.

In view of above, the award dated 28.10.2004 is modified to the extent that the amount awarded of ₹3,56,000/- is enhanced by ₹1,97,240/-. The appellants shall be entitled to interest @7.5 % per annum on the enhanced

amount of compensation from the date of filing of claim petition till the realization of the amount.

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

DECEMBER 06, 2018
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*