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

**FAO No.3499 of 2009 (O&M)
Date of Decision: 30.11.2018**

Sheela Devi and others

Appellants

Versus

Jagdamba Parsad Mishra and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 17.03.2009 passed by Motor Accident Claims Tribunal, Sonipat [hereinafter referred to as 'the Tribunal'] has been assailed by legal heirs of Ravinder Kumar (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The appellants are mother and two minor brother and sister of the deceased. The driver of Tralla bearing registration No. HR-46-8385 [hereinafter referred to as 'offending vehicle'], owner and insurer of the offending vehicle i.e. ICICI Lombard General Insurance Company Ltd. have been arrayed as respondents No.1 to

3 respectively in the appeal.

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 brief facts necessary for adjudication of the present appeal are that on 04.08.2007, the deceased, aged 30 years was driving Canter bearing registration No. HR-20A-8566, on Delhi-Punjab route. Near Goel Spinning Mills, Pritampura, the offending vehicle was parked on the road without any indicator, as a result the canter driven by Ravinder Kumar struck against the offending vehicle. As a result of the impact, he suffered multiple injuries and died at the spot. FIR No.163, dated 04.08.2007 was registered at Police Station Kundli.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that accident occurred due to negligence of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹2,20,500/- alongwith interest @ 7.5% per annum. The amount awarded included ₹2,000/- for funeral expenses and ₹2,500/- for loss of estate.

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

The Tribunal assessed monthly income of the deceased

as ₹3,600/- per month; 1/3rd deduction was made for self expenses; multiplier of '15' was applied, considering the age of mother of the deceased and ₹4,500/- was awarded under the conventional heads.

Learned counsel for the appellants contends that the deceased was a driver and monthly income assessed by the Tribunal is on the lower side. He further submits that no future prospects have been awarded. The grievance raised is that multiplier of '15' has wrongly been applied relying upon the age of mother of the deceased and the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer defended the award and argues that claimants were not able to substantiate the monthly earning of the deceased and the Tribunal rightly assessed the earning of the deceased as ₹3,600/- per month.

The contentions raised by learned counsel for the appellants deserves acceptance. At the time of accident, the deceased was driving a canter, hence, it establishes that he was a trained driver, in such circumstances, it would be appropriate to assess his monthly income as semi-skilled labourer. The minimum wages for a semi-skilled labourer prevalent in the State of Haryana at the time of accident were ₹3,750/-. The compensation shall be calculated considering the monthly income as ₹3,750/-.

Having due regard to the decisions of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157** and **Hem Raj Vs. Oriental Insurance**

Company Ltd. 2018 (2) PLR 480, 40% future prospects are awarded as the deceased was 30 years of age at the time of accident. Claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate.

The Tribunal erred in applying multiplier considering the age of mother of the deceased. The multiplier is to be applied considering the age of deceased at the time of accident.

The Supreme Court in the case of **Sube Singh and another vs. Shyam Singh (Dead) and others; 2018 (3) SCC 18** has held as under:

“On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants.”

There is no dispute that the deceased was 30 years old at the time of accident, hence, multiplier of 17 is to be applied.

In view of above discussion, compensation is re-

calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased assessed	3,750/-
40 % Future Prospects	1,500/-
Sub Total	5,250/-
1/3 rd deduction for self expenses as decided by the Tribunal	1,750/-
Monthly Dependency	3,500/-
Annual Dependency	42,000/-
Applying multiplier of 17	7,14,000/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Grand Total	7,44,000/-

The award dated 17.03.2009 is modified to the extent that amount of ₹2,20,500/- awarded by the Tribunal is enhanced to ₹7,44,000/-.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

November 30, 2018
pankaj baweja

1. Whether speaking/ reasoned

:

Yes/ No
2. Whether reportable

:

Yes/ No