

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

FAO No. 6246 of 2011
DATE OF DECISION : 11.05.2018

Narender Kumar and another

....APPELLANTS

Versus

Neki Ram and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Chander Shekhar, Advocate,
for the appellants.

Mr. Paul S. Saini and Mr. Vipul Sharma, Advocates,
for respondent No.2.

* * *

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 22.04.2011 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal').

2. The appeal has been filed by the unfortunate parents, who lost their 19 years old young son Raj Kumar alias Arun in a motor vehicular accident that took place on 14.03.2010. Raj Kumar along with Kasturi Devi was going on his motor cycle bearing registration No. HR-07C-0607. Near Chirag Nursing Home, Jhansa Road, Kurukshetra, a car bearing registration No. HR-07N-0329 was parked in the centre of the road and the other car was overtaking the motor cycle, in all this, motor cycle of the deceased struck the backside of the parked car. As a result of the accident, he suffered multiple injuries. On his way to the hospital, he succumbed to the injuries.

FIR No. 122 dated 14.03.2010 was registered at Police Station City Thanesar.

3. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the parents of the deceased.

4. In the claim petition, it was pleaded that the deceased was working in a shop and was earning ₹ 6,000/- per month. The Tribunal held that there was contributory negligence of the deceased and driver of the car bearing registration No. HR-07N-0329 in the ratio of 50 : 50. The age of the deceased was proved as 19 years. The Tribunal calculated the compensation as ₹ 3,30,000/-, as there was contributory negligence, therefore, the appellants were held entitled to a sum of ₹ 1,65,000/- along with interest at the rate of 7.5% per annum.

5. The present appeal has been filed for enhancement of compensation.

6. Learned counsel for the appellants contends that the Tribunal erred in assessing the monthly earning of the deceased as ₹ 3,000/-, which is lower than even the minimum wages prevalent at the time of the accident. He contends that no future prospects have been added and the amount awarded under the conventional heads is on the lower side. No other issue is raised.

7. Learned counsel for the insurer of the car bearing registration No. HR-07N-0329 defended the award and resisted any enhancement.

8. The Tribunal erred in assessing the monthly earning of the deceased as ₹ 3,000/-. PW.3 Rajinder Kumar deposed before the Tribunal

that the deceased was working at his shop for the last one and half years and he used to pay him salary of ₹ 4,500/- per month, besides daily expenses of ₹ 50/-. Though he had not brought any account books etc., to prove the same, but still his deposition deserves acceptance. Even the minimum wages prevalent in the State of Haryana at the time of the accident was approximately ₹ 4,400/-. In the facts and circumstances of the case, the compensation is awarded by assessing the monthly earning of the deceased as ₹ 4,500/-.

9. Having due regard to a decision of the Supreme Court in *National Insurance Company Limited Versus Pranay Sethi and others*, AIR 2017 (SC) 5157, 40% future prospects are to be added and the appellants would be entitled to ₹ 15,000/- each for funeral expenses and loss of estate. The deceased was unmarried and was 19 years of age, one-half deduction for self expenses has to be made and multiplier of 18 is applied.

10. The compensation is calculated as under :-

Monthly Income	₹ 4,500/-
Add 40% future prospects	₹ 1,800/-
Total	₹ 6,300/-
1/ 2 deduction for self expenses	₹ 3,150/-
Dependency	₹ 3,150/-
Applying multiplier of 18	
(3150 x 12 x 18)	₹ 6,80,400/-
Funeral expenses	₹ 15,000/-
Loss of estate	₹ 15,000/-
Total	₹ 7,10,400/-

10. Since there was contributory negligence in the ratio of 50 : 50,

therefore, the claimants would be entitled to ₹ 3,55,200/-. The award dated 22.04.2011 is modified to the extent that the amount of ₹ 1,65,000/- awarded by the Tribunal is enhanced to ₹ 3,55,200/-.

11. The appellants would be entitled to the enhanced amount along with interest at the rate of as awarded by the Tribunal from the date of filing of the claim petition till realisation of the amount.

12. The appeal is partly allowed in the aforesaid terms.

May 11, 2018
ndj

(AVNEESH JHINGAN)
JUDGE

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