

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

FAO-3583-2012 (O&M)
Date of decision: 09.02.2018

Sharanjit Kaur and others

.... Appellants

Versus

Rakesh Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Divya Godara, Advocate
for the appellants.

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

Avneesh Jhingan, J.

The present appeal has arisen from award dated 12.09.2011 passed by Motor Accidents Claims Tribunal, Sirsa (hereinafter referred to as the 'Tribunal').

An accident took place on 10.02.2010 at about 8.30 a.m. Satpal was standing near the office of brick kiln of Nachhatar Singh at Rangri Road. Bajrang Lal, Sukhdev Singh and Kulwant Singh were already standing there. Scorpio bearing registration No. HR-44C-5623 struck Satpal. As a result, he suffered grievous injuries on his head and other parts of the body. He was taken to Medicity Hospital, Hisar. On 15.02.2010, he succumbed to his injuries. FIR No.26 dated 14.02.2010 was registered. Ist respondent was driving the Scorpio; 2nd respondent was owner of the

vehicle and third respondent was the insurer.

In a claim petition filed under Section 166 of Motor Vehicles Act, 1988 (for short, 'the Act'), the Tribunal held that the accident occurred due to rash and negligent driving of Ist respondent. A sum of Rs.6,22,000/- along with interest @ 9% per annum was awarded. Insurer was held jointly liable alongwith owner and the driver. The Tribunal while assessing the compensation noted that the deceased was 31 years of age, survived by a widow and three minor children. The Tribunal did not accept that the deceased was working as a mason and assessed his income as of an unskilled labourer.

The appellants have filed the present appeal for enhancement of compensation.

Learned counsel for the appellants assailed the award by arguing that (i) deposition of PW1-Bajrang Lal proved the occupation of the deceased. In such circumstances, the Tribunal erred in assessing the monthly earning of the deceased as of an unskilled labourer; (ii) No addition on account of future prospects was made; (iii) the amount of Rs.10,000/- awarded for funeral expenses etc. is on the lower side; and (iv) the bills worth Rs.35,000/- was produced before the Tribunal but the said amount was not added in the compensation.

On the other hand, learned counsel appearing for the insurer supported the view taken by the Tribunal. He argued that no interference by this Court is called for. He contended that a multiplier of 17 has wrongly been applied.

There cannot be a serious dispute that the deposition of PW1 had proved that he was working in the brick kiln of Nachhattar Singh where the deceased was working as a mason. The occupation of the deceased was proved though nothing came on record to prove his earning. In such circumstances, the safest yardstick to be followed is minimum wages for a semi skilled labourer prevalent in the State of Haryana at the time of accident. Both the counsel agreed that at the time of the accident, the minimum wages of an unskilled labourer would be Rs.4478/- per month. Rounding of the said figure, the monthly earning of the deceased is assessed at Rs.4500/-.

In view of the decision of the Constitutional Bench of the Hon'ble Apex Court in **National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017(6) RAJ, 143**, the appellants shall be entitled to an amount of 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.

As per decision of the Hon'ble Apex Court in **Pranay Sethi 's case (supra)** and **Hem Raj vs. Oriental Insurance Company Ltd., 2017 DNJ, 1102**, 40% future prospects should be added as per the age of the deceased.

The contention raised by learned counsel for the insurer deserves acceptance as the same is inconsonance 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**.

Since the amount of compensation is being reassessed, the

multiplier of 16 would be applied as per the age of the deceased.

For the reasons mentioned above, the compensation is recalculated as under :-

Monthly income	Rs.4500/-
Annual income	Rs.54,000/-
Add 40% future prospects	Rs.21,600/-
Total income	Rs.75,600/-
1/4 th deduction for self expenses	Rs.18,900/-
Dependency	Rs.56,700/-
Applying multiplier of 16	Rs.9,07,200/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Total	Rs.9,77,200/-

The award dated 12.09.2011 is modified to the extent that the amount awarded of Rs.6,22,000 /- is enhanced to Rs.9,77,200 /-.

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

09.02.2018
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- 1.Whether the order is speaking/reasoned: Yes/No
- 2.Whether the order is reportable : Yes/No