

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5009 of 2012
DECIDED ON: NOVEMBER 26, 2018

ISHWAR SINGH & ANOTHER

.....APPELLANTS

VERSUS

MOHAMAD IMRAN AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Upender Prasher, Advocate
for the appellants/claimants.

None for respondents No.1 and 2.
(driver and owner)

Mr. Sanjeev Goyal, Advocate
for respondent No.3.

AVNEESH JHINGAN J. (ORAL)

The legal heirs of Sudesh Kumar (deceased) have assailed the award dated 27.07.2012 passed by Motor Accident Claims Tribunal, Kaithal (for brevity 'the Tribunal') in MACT No. 167 of 2012.

2. The driver of truck bearing registration No. HR-37B-7032 (hereinafter referred to as 'offending vehicle'); owner and insurer of the offending vehicle have been arrayed as respondents no. 1 to 3 respectively, in the appeal.

3. The facts emanating from the record are that on 26.12.2009, Sudesh Kumar (deceased) alongwith his brother Mukesh Kumar Ranga and his cousin Jasvir was coming back from village Kalayat. Sudesh Kumar (deceased) was driving his motorcycle, while Mukesh Kumar Ranga and Jasvir were travelling on another motor cycle bearing registration No. HR-8E-7964. When they reached near Bus Stand of village Dumara the offending vehicle which was being driven in a rash and negligent manner came from the opposite side at a very high speed and struck into the motorcycle of Sudesh Kumar. It also hit two other persons who were sitting on the side of the road. As a result of the impact Sudesh Kumar lost his life and Prem Singh suffered injuries. FIR was registered at Police Station Kalayat.

4. The legal heirs of Sudesh Kumar filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

5. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation to the tune of ₹2,00,000/- alongwith interest @ 9% per annum to the legal heirs of Sudesh Kumar.

6. The age of the deceased at the time of accident was 25 years. The Tribunal assessed the monthly income of the deceased as ₹3500/- per month. ½ deduction was made for self-expenses and multiplier of 9 was applied considering the age of the father of the deceased. The amount awarded included ₹ 5000/- for funeral expenses and ₹ 6000/- for loss of consortium.

7. Heard learned counsel for the parties and perused the paper book.
8. Learned counsel for the appellants argued that no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side. He further argued that the Tribunal has wrongly assessed the monthly income of the deceased as was the minimum wages for an unskilled labourer at the time of accident in the State of Haryana was ₹3840/- per month. The grievance is that the Tribunal erred in applying multiplier of 9 relying upon the age of the father of the deceased.
9. Learned counsel for the insurer defended the award and resisted any further enhancement.
10. The contention raised by learned counsel for the appellants deserves acceptance.
11. In the cases where the claimants failed to substantiate the monthly earnings of the deceased, the safest yardstick would be to rely upon the minimum wages prevalent in the State at the time of accident. The minimum wages at the time of accident in the State of Haryana for an unskilled labourer was ₹3840/-. The same shall be considered for calculating the compensation.
12. In view of the judgments 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 ₹15000/- each for funeral expenses and for loss of estate.
13. The Tribunal erred in applying the Multiplier of 9 considering the age of the father of the deceased. 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.”

11. In view of the judgment quoted above, multiplier has to be applied considering the age of the deceased and not of the parents. Considering the age of the deceased, multiplier of 18 is applied.

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

	Head	Compensation awarded
(i)	Income	₹ 3840/- per month
(ii)	Future prospects at 40%	₹ 1536/- per month
(iii)	Total Income	₹ 5376/- per month
(iv)	Deduction of personal expenses	₹2688/- (i.e. 1/2 nd of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	2688x12x18= ₹5,80,608/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹6,10,608/-

13. The award dated 27.07.2012 is modified to the extent that amount of ₹2,00,000/- awarded by the Tribunal is enhanced to ₹6,10,608/-. 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.

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

(AVNEESH JHINGAN)
JUDGE

NOVEMBER 26, 2018
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Whether speaking/reasoned:
Whether reportable :

Yes / No
Yes / No