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

FAO No.6066 of 2012

Date of Decision: 20.11.2018

Krishana Rani and others

Appellants

Versus

Sewa Singh and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Jasuja, Advocate
for the appellants.

Respondent No.1 proceeded ex-parte
vide order dated 17.03.2016 of this Court.

Mr. M.B. Jain, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The legal heirs of Ravi Dass are in appeal against award dated 21.08.2012 passed by the Motor Accident Claims Tribunal, Ferozepur (for brevity 'the Tribunal') seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

Mother and two brothers of the deceased are the appellants. The owner of truck bearing registration No. JK-14-7287 (hereinafter referred to as 'offending vehicle') was arrayed as respondent No.1 but has been proceeded ex-parte vide order dated 17.03.2016 of this Court. The Driver of offending vehicle has not

been impleaded as respondent in this appeal as he was proceeded ex-parte before the Tribunal and by the time of filing appeal he had expired. The insurer of offending vehicle i.e. United India Insurance Company Ltd. has been arrayed as respondent No.2 in the appeal.

The facts emanating from the record are that on 19.12.2009, Ravi Dass was coming back from Ludhiana to Abohar. On his way, he met one Sandeep Kumar and they engaged a three wheeler bearing registration No. PB-02AF-9551 and started their journey towards Abohar. When they reached near village Alamgarh, the three wheeler was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Ravi Dass suffered grievous injuries and died at the spot. FIR No.226, dated 20.12.2009 was registered at Police Station Sadar Abohar, District Ferozepur.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act') was filed by mother and two brothers of the deceased. The Tribunal after considering the facts and evidence adduced on record, held that the accident occurred due to rash and negligent driving of the offending vehicle. The Tribunal awarded a sum of ₹3,54,800/- alongwith interest @ 9% per annum. The said amount included ₹2,000/- as expenses for last rites.

The claimants had pleaded before the Tribunal that the deceased was working as Supervisor in M.J. Creation, Ludhiana and was getting monthly salary of ₹10,000/- but they were not able to substantiate it. The Tribunal assessed monthly earning of the deceased as ₹4,200/- relying upon minimum wages prevalent in the

State at the time of accident. ½ deduction for self expenses was made and multiplier of 14 was applied.

Heard learned counsel for the parties, perused the paper book and relevant documents placed on record.

Learned counsel for the appellants contends that Tribunal erred in assessing monthly income of the deceased as ₹4,200/-. He was working as Supervisor with M/s. M.J. Creation, Ludhiana. The claimants had not only produced the salary certificate but Kundan Lal, Proprietor of M.J. Creation, Ludhiana deposed as PW3 and he brought the salary register to prove that monthly salary of ₹10,000/- was being paid to the deceased. He further contends that Tribunal erred in applying multiplier of 14 relying upon age of the mother of the deceased. His grievances are that (i) no future prospects have been awarded; (ii) amounts awarded under the conventional heads are on the lower side; and (iii) no amount has been awarded for loss of estate.

Learned counsel for the insurer contends that there was no cogent evidence to prove monthly earning of the deceased. Moreover, in the FIR, it was stated that deceased was working in a Hosiery and it was not mentioned that he was working with M/s M.J. Creation. He further contends that income should be assessed as per the minimum wages prevalent in the State at the time of accident. But he could not raise any serious dispute with regard to awarding future prospects.

The contention raised by learned counsel for the appellants deserves acceptance. From the perusal of record, it is evident that the claimants had discharged the onus cast upon them to prove the monthly earning of the deceased. The salary certificate of the deceased was produced. The proprietor of M/s M.J. Creation, Ludhiana himself appeared before the Tribunal and deposed that he was paying salary of ₹10,000/- per month to the deceased. The Salary Register from April, 2009 onwards was produced before the Tribunal. The respondents were not able to rebut the evidence adduced by the claimants. The reasoning given by the Tribunal for ignoring the evidence adduced cannot be sustained. The contents of FIR rather supports version of the claimants that the deceased was working in a Hosiery concern. It is not expected that in the FIR it should be mentioned that who was the employer of the deceased and on what salary or on what post he was working. This itself cannot be a basis for ignoring a fact duly substantiated by adducing evidence.

In the facts and circumstances of the case, the compensation is re-calculated by taking monthly income of the deceased as ₹10,000/-. In consonance with decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157** and **Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480**, 40% future prospects are awarded.

The Tribunal erred in applying multiplier of 14 considering

age of the mother of the deceased. The multiplier is to be applied keeping in view the age of deceased at the time of accident.

The issue that multiplier has to be applied as per the age of the deceased is no longer *res-integra*. The Supreme Court in 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 between the parties that the deceased was 22 years old at the time of accident. In consonance with decision of the Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,** multiplier of 18 is to be applied.

In consonance with decision of the Supreme Court in **Pranay Sethi's** case (supra), appellants are entitled to ₹15,000/- each for funeral expenses and loss of estate.

In view of above discussion, compensation is re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased assessed	10,000/-
40 % Future Prospects	4,000/-
Sub Total	14,000/-
1/2 deduction for self expenses	(-) 7,000/-
Monthly Dependency	7,000/-
Annual Dependency	84,000/-
Applying multiplier of 18	15,12,000/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Grand Total	15,42,000/-

The award dated 21.08.2012 is modified to the extent that amount awarded of ₹3,54,800/- by the Tribunal is enhanced to ₹15,42,000/-.

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 allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

November 20, 2018
pankaj baweja

1. Whether speaking/ reasoned

:

Yes/ No
2. Whether reportable

:

Yes/ No