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

**FAO No. 1054 of 2013
DECIDED ON: NOVEMBER 29, 2018**

SUDESH LATA AND OTHERS

.....APPELLANTS

VERSUS

MANOJ PURI AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. D.K. Singla, Advocate
for the appellants.

Mr. V.K. Garg, Advocate
for respondent No.2-Insurance Company

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AVNEESH JHINGAN, J (ORAL)

The widow and two minor children of Hans Raj (deceased) are in appeal against the award dated 28.07.2012 passed by Motor Accident Claims Tribunal, Panchkula (for short 'the Tribunal') in MACT Case No. 138 of 2010 seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

2. The driver-cum-owner of Swaraj Mazda bearing registration No. CH-03-A-0579 (hereinafter referred to as 'offending vehicle') and insurer of

offending vehicle i.e. National Insurance Company Ltd., have been arrayed as respondents No.1 & 2 respectively in the appeal.

4. The brief facts necessary for adjudication of the present appeal are that on 22.09.2009, Hans Raj (deceased) was returning from Chandigarh to his residence at Panchkula. He was on his motorcycle, when he was waiting at the Sukhna Lake light point for the lights to turn green, he was hit by a rashly and negligently driven offending vehicle. As a result of the accident, he suffered multiple injuries and lost his life. An FIR was registered.

5. The legal heirs of Hans Raj (deceased) filed a claim petition under Section 166 of the Act before the Tribunal.

6. The Tribunal after considering the facts and appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving 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 compensation to the tune of ₹13,61,328/- alongwith interest @6% per annum. The amount awarded included ₹10,000/- each, for loss of consortium, loss of estate and for funeral expenses.

7. The age of the deceased at the time of accident was 32 years. The deceased was an income tax payee and his income tax returns for the assessment years 2007-2008 to 2009-2010 were exhibited before the Tribunal. Income tax return for the assessment year 2009-2010 was filed after the death of Hans Raj. The income of the deceased was taken as ₹95,800/- per annum by the Tribunal relying on income tax return for the assessment year 2008-2009. 1/3rd deduction for self expenses was made and 30% future prospects were awarded. Multiplier of 16 was applied.

8. Heard learned counsel for the parties and perused the paper book.

9. Learned counsel for the appellants argued that the Tribunal erred in considering the annual earning of the deceased as ₹ 95,800/- relying upon the income tax return for the assessment year 2008-2009. He argued that as per the said return, annual income of the deceased was ₹ 1,60,800/-. The grievance raised is that 30% future prospects were awarded instead of 40%. He further contended that the amount awarded under the conventional heads are on lower side.

10. Learned counsel for the insurer defended the award and resisted any further enhancement.

11. The contentions raised by learned counsel for the appellants deserve acceptance.

12. The income tax return for the assessment year 2009-2010 was filed after the date of accident. Even the tax was also deposited at a later stage. The Tribunal rightly relied upon return for assessment year 2008-2009. From perusal of income tax return for the assessment year 2008-09 (Ex.P2), the annual income of the deceased from his business and profession was ₹1,60,800/-. The Tribunal while considering the income, took a figure of net taxable income. For calculating the compensation to be awarded under Section 166 of the Act, the income from business and profession is to be considered and not the net tax payable income. As per the return, no income tax was to be paid on the annual income of the deceased i.e ₹1,60,800/- per annum.

13. The deceased was 32 years old at the time of accident. Having due regard to the decisions 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. Appellants/claimants are entitled to a sum of ₹15,000/- each for funeral expenses and for loss of estate. Further ₹ 40,000/- is awarded to the widow for loss of consortium.

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

	Head	**Compensation awarded**
(i)	Income	₹ 1,60,800/- (Annual income)
(ii)	Future prospects at 40%	₹ 64,320/-
(iii)	Total Income	₹ 2,25,120/-
(iv)	Deduction of personal expenses	₹ 75,040/- (i.e. 1/3rd of total income)
(v)	Multiplier	16 (as per age of deceased)
(vi)	Total Dependency	₹1,50,080x16=₹ 24,01,280/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹24,71,280/-

16. The award dated 28.07.2012 is modified to the extent that amount awarded by the Tribunal of ₹13,61,328/- is enhanced to ₹ 24,71,280/-. 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 the amount.

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

(AVNEESH JHINGAN)
JUDGE

NOVEMBER 28, 2018
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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