

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

FAO No.700 of 2012 (O&M)

Date of decision: 17.10.2018

Akbar

.... Appellant

Versus

Najru and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Aashish Gupta, Advocate
for the appellant.

Mr. Tanmaoy Gupta, Advocate
for respondent No.2.

Mr.Sudarshan Singh, Advocate
for respondent No.3-Insurance Company.

Avneesh Jhingan, J. (Oral)

The present appeal has been filed against the award dated 05.05.2011 passed by Motor Accidents Claims Tribunal, Nuh (hereinafter referred to as 'the Tribunal').

2. The son of Shamshu is the appellant. The driver of the dumper bearing registration No.HR-38J-9099 (for brevity, 'the offending vehicle'); owner and insurer of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal. The widow and other two sons of Shamshu have been arrayed as proforma respondents No.4 to 6 respectively in the appeal.

3. The brief facts as emanating from the record are that on 05.05.2009, Shamshu aged 70 years while doing a construction work on the side of the road, he was hit by a rashly and negligently driven offending vehicle. As a result of impact, he suffered grievous injuries and was taken to Government Hospital, Mandikhera. From there he was referred to Safdarjang Hospital where he died due to the injuries suffered by him in the accident.

4. The Tribunal, after considering the facts and appreciating the evidence produced held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹1,45,000/- along with interest @ 6% per annum. The amount awarded included ₹5,000/-each for funeral expenses and loss of consortium to the widow.

5. Learned counsel for the appellant contended that the Tribunal assessed the monthly income of the deceased as ₹3,000/- which is less than the minimum wages prevalent at the time of the accident for an unskilled labourer. His grievance is that the amounts awarded under the conventional heads are on the lower side. No other issue has been raised.

6. Learned counsel for the respondents defended the award and resisted any enhancement.

7. The contentions raised by learned counsel for the appellant deserve acceptance. In case where the claimants failed to substantiate the monthly earning of the deceased, the safest yardstick to be followed is to

rely upon the minimum wages prevalent in the State at the time of the accident. In May 2009, the minimum wages of an unskilled labourer was ₹3839/- per month. For calculation purposes, the same is rounded off to ₹3840/-.

8. In consonance with the decision of the Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157**, the claimants are entitled to ₹15,000/- for loss of estate, ₹15,000/- for funeral expenses and ₹40,000/- for loss of consortium.

9. In view of the latest decision of Supreme Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) R.C.R. (Civil) 333**, ₹40,000/- is awarded as parental consortium to the children of deceased.

10. In view of the above discussion, the compensation is recalculated as under :-

Monthly income	₹3840/-
1/4th deduction for self expenses	₹960/-
Dependency	₹2880/-
Applying multiplier of 5	₹1,72,800/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of parental consortium to children	₹40,000/-
Loss of consortium to widow	₹40,000/-
Total	₹2,82,800/-

11. The award dated 05.05.2011 is modified to the extent that the amount awarded by the Tribunal of ₹1,45,000/- is enhanced to ₹ 2,82,800 /-.

12. The claimants would be entitled to enhanced amount along

with interest @ 7.5% per annum from the date of filing the claim petition till the realisation of the amount. The enhanced amount should be disbursed in the same proportion to the claimants as was held by the Tribunal.

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

(AVNEESH JHINGAN)
JUDGE

17.10.2018

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1. Whether the order is speaking/reasoned: Yes/No

2. Whether the order is reportable : Yes/No