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

FAO-2682-2013 (O&M)

Date of decision:-11.12.2018

Smt. Sumitra Devi and others ....Appellants

Versus

Manoj Kumar and others ....Respondents

CORAM: HON'BLE Mr. JUSTICE AVNEESH JHINGAN

Present:- Ms. Bhawna Thakur, Advocate for
Mr. Vikrant Hooda, Advocate
for the appellants.

Mr. M.B.Jain, Advocate
for respondent No. 3.

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AVNEESH JHINGAN J. (Oral)

The award dated 17.12.2009 passed by Motor Accident Claims Tribunal, Jhajjar has been assailed by the legal heirs of Raj Singh (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

The appellants are the widow, four minor children and the mother of the deceased. The driver of the Maruti Car bearing registration No. HR-51-X-1524 [hereinafter referred to as 'offending vehicle'], owner and the Insurer (Iffco-Tokio General Insurance Company Limited) of the offending vehicle have been arrayed as respondents No. 1 to 3 respectively in the appeal.

The facts of the case are that on 19.04.2008, Raj Singh was going to B.R.Bhatta Company. On his way, he was struck by a rashly and negligently driven offending vehicle. He was taken to General Hospital, Jhajjar from where he was shifted to PGIMS, Rohtak where he succumbed to injuries on 21.04.2008. FIR No. 120 dated 22.04.2008 was registered in Police Station Sadar, Bahadurgarh by his brother Ramesh Kumar.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence produced, held that the accident was caused due to the 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 a sum of ₹ 4,75,000/- along with interest at the rate of 6% per annum. The amount awarded included ₹12,000/- for transportation and funeral expenses and ₹ 5000 for loss of consortium and ₹10,000/- for medical expenses.

In the claim petition, the claimants pleaded that the deceased was earning ₹10,000/- per month as he was having two mule carts and was a contractor. But the claimants failed to substantiate the occupation and earning of the deceased. Consequently, the Tribunal assessed his monthly income as ₹ 3500/- per month, made 1/3rd deduction for self-expenses and multiplier of 16 was applied.

Learned counsel for the appellants contends that no future prospects have been awarded. He, further, contends that the tribunal erred in making 1/3rd deduction for self-expenses and the amount awarded under the conventional heads are on lower side.

Learned counsel for the Insurance company contends that the Tribunal applied multiplier of 16 instead of 15 as deceased was about 40 years of age.

Heard learned counsel for the parties and perused the papers book and record.

No one has put in appearance on behalf of the owner of the offending vehicle in spite of service.

The contentions raised by the learned counsel for the appellants deserve acceptance. There was dispute with regard to the age of the deceased. Copy of the ration card was produced to state that he was around 40 years of age. As the date of issuance of ration card was not available, Tribunal estimated his age to be 40 years. In the postmortem report also, his age was mentioned as 40 years. The age mentioned in postmortem report is only an estimation and from ration card also the exact age of the deceased was not evident. Since the age of the deceased has been estimated to 40 years, the same is considered for awarding future prospects.

Having due regard to the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** 40% future prospects are awarded.

The deceased was survived by more than 6 dependents, hence, in consonance with the decision of the Supreme Court in ***Sarla Verma***

and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21, 1/4th deduction is made for self-expenses.

The claimants are also entitled ₹15,000/- each for future expenses and for loss of estate. ₹40,000/- is awarded to the widow for loss of consortium as per ***Pranay Sethi's case(supra)***.

As the quantum of compensation is being re-visited, a multiplier of 15 is applied in consonance with the decision of the Supreme Court in ***Sarla Verma's case(supra)***.

There is no dispute between the parties with regard to the monthly income of the deceased as assessed by the Tribunal.

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	3500
40 % Future Prospects	1400
Sub Total	**4900**
1/4th deduction for self expenses	1225
Monthly Dependancy	3675
Applying multiplier of '15' (3675X15X12)	6,61,500/-
Funeral Expenses	15000
Loss of Estate	15000
Loss of consortium to widow	40000/-
Medical Allowances (As awarded by the Tribunal)	10000/-
Grand Total	**7,41,500/-**

The award dated 17.12.2009 is modified to the extent that amount awarded of ₹4,75,000/- is enhanced to ₹7,41,500/-. The appellants are entitled to the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of the amount. The compensation shall be distributed to the appellants in the same proportion as has been held by the Tribunal.

The appeal is allowed in the afore-said terms.

11th December, 2018 **(AVNEESH JHINGAN)**
shabha **JUDGE**

Whether speaking/reasoned *Yes*
Whether reportable *Yes/No*