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

FAO No. 2818 of 2013
DECIDED ON: DECEMBER 03, 2018

NACHHATRO DEVI AND OTHERS

.....APPELLANTS

VERSUS

BABITA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Ishan Singh Cooner, Advocate
for the appellants.

Mr. Saurav Jindal, Advocate
for respondents No. 6 and 9.

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AVNEESH JHINGAN, J (ORAL)

The award dated 17.12.2012 passed by Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') has been assailed by the widow and two minor children of Ami chand (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The facts emanating from the record are that on 20.02.2011

Amichand (Halwai) alongwith his other workers had gone to village Gajipur in a function and after completing their work they were returning to Ambala in a three wheeler bearing registration No. HR-37-C-5270 alongwith halwai goods/articles. When they reached near over bridge Baba Badbagh Singh Dera, Baldev Nagar, Ambala City, Swaraj Mazda bearing registration No. HR-46-A-6095, dashed in the three-wheeler. As a result of the accident, Ami chand sustained serious injuries and died at the spot. FIR No.54 dated 20.02.2011 was registered.

3. A claim petition under Section 166 of the Act was filed by the legal heirs of the deceased.

4. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of three wheeler. The owner of the three-wheeler was held liable to pay the compensation. However, it was ordered that the insurance company shall pay the compensation amount to the claimants, thereafter, they were allowed to recover the same from the owner of three wheeler.

5. The Tribunal awarded a compensation to the tune of ₹6,47,500/- alongwith interest @9% per annum. The Tribunal also awarded an amount of ₹ 10,000/- each for loss of consortium, for loss of estate, funeral expenses and towards non-pecuniary damages.

6. The claimants pleaded that the deceased was working as Halwai and also owned milk dairy and was earning of ₹12,000/- per month. *Albeit* claimants failed to substantiate the monthly earnings of the deceased, the Tribunal assessed the monthly income of the deceased as ₹ 4500/- per month

relying upon the minimum wages of casual labourer prevalent in the State of Haryana at the time of accident. Multiplier of 15 was applied and 1/4th deduction for self expenses was made.

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

8. Learned counsel for the appellants contended that the Tribunal erred in assessing the monthly income of the deceased as an unskilled labourer. His grievance is that no future prospects have been awarded and the amount awarded under the conventional heads are on the lower side.

9. Learned counsel for the respondent-Insurance Company argued that the appellants failed to produce any cogent evidence with regard to the occupation and monthly earnings of the deceased. He further argued that the deceased was 40 years old at the time of accident, hence, future prospects should be in consonance with the decision of the Supreme Court ***National Insurance Co. Ltd. vs. Pranay Sethi and others;*** ***2017 (4) RCR (Civil) 1009.***

10. The contention raised by learned counsel for the appellants deserves acceptance.

11. There is no dispute that he was working as Halwai at the time of accident also he was carrying goods and articles of Halwai. In such circumstance, it would be appropriate to consider the minimum wages prevalent in the State of Haryana for a semi-skilled labourer at the time of accident. The minimum wages prevalent in the State of Haryana at the time of accident for a semi-skilled labourer was ₹4762/-. These are rounded of to ₹4800/-. There is no dispute between the parties with regard to the multiplier applied and 1/4th deduction made for self expenses.

12. In view of the decision of Supreme Court in ***Pranay Sethi's*** case (supra) and ***Hem Raj vs. Oriental Insurance Company*** Ltd ;**2018 (2) PLR 480**; 40% future prospects are to be awarded where the deceased is in the age group of 30-40 years. In the present case there is no proof of age of the deceased, the Tribunal opined that that deceased would fall in age group of 36-40 years. In such circumstances, 40% future prospects are awarded.

13. In view of the decision of Supreme Court in ***Pranay Sethi's*** case (supra) claimants are entitled to a sum of ₹15,000/- each, for funeral expenses and for loss of estate. Further, an amount of ₹40,000/- is awarded for loss of consortium to the widow.

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

	Head	**Compensation awarded**
(i)	Income	₹4800/- per month
(ii)	Future prospects at 40%	₹1920/- per month
(iii)	Total Income	₹6720/- per month
(iv)	Deduction of personal expenses	₹1680/- (i.e. 1/4th of total income)
(v)	Multiplier	15 (as per age of deceased)
(vi)	Total Dependency	₹5040x12x15=₹9,07,200/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of Consortium	₹40,000/-
	Total Compensation awarded	₹9,77,200/-

15. The award dated 17.12.2012 is modified to the extent that amount awarded of ₹6,47,500/- is enhanced to ₹9,77,200/- and the appellants shall be entitled to interest @7.5 % per annum on the enhanced amount of compensation from the date of filing of claim petition till actual realization of the amount.

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

(AVNEESH JHINGAN)
JUDGE

DECEMBER 03, 2018
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No