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

FAO-1672-2014
Date of decision: 19.11.2018

Vidha Devi and another .... Appellants

Versus

Darshan and others ..... Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr.Ram Kumar Saini, Advocate for
Mr.Sheenu Sura, Advocate
for the appellants.

Mr. Naveen Dahiya, Advocate for
Mr. Shalender Mohan, Advocate
for respondent No.1.

Ms. Vandana Malhotra, Advocate
for respondent No3-Insurance Company.

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**Avneesh Jhingan, J. (Oral)**

The legal heirs of Shyama Prasad Nirala are in appeal against the award dated 30.09.2013 passed by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as the 'Tribunal') seeking enhancement of compensation.

The widow and major son of the deceased, are the appellants. The driver of the tanker bearing registration No.RJ-09GA-0346 (for brevity, 'the offending vehicle'), owner and the insurer of the offending vehicle i.e. HDFC ERGO General Insurance Company Ltd. have been arrayed as respondents No.1 to 3 respectively in the present appeal.

The brief facts emanating from the record are that on 28.11.2012, Shyama Prasad Nirala was driving his Moped bearing registration No.HR-99CJ(T)2259. When he reached at Ambedkar Chowk, Hansi, his vehicle was hit by a rashly and negligently driven offending vehicle. As a result of the accident, he suffered injuries and died at the spot. FIR No.833 dated 28.11.2012 was registered at Police Station, City Hansi.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act') was filed. The Tribunal, after considering the facts and on appreciating the evidence produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The Tribunal awarded a sum of ₹4,00,000/- along with interest @ 7.5% per annum. The insurer of the vehicle was to pay the compensation to the claimants and recovery rights were given against owner of the offending vehicle.

It was pleaded before the Tribunal that the deceased stood retired from Irrigation Department, Bihar and was receiving a pension of ₹9,000/- per month. It was further claimed that he was running an electric shop in City Hansi and was earning ₹10,000/- per month from the shop. No evidence was adduced with regard to the fact that he was running an electric shop and was earning ₹10,000/- from the said shop. The Tribunal assessed the monthly income of the deceased as ₹9,000/-; 1/3rd deduction for self expenses was made and multiplier of 5 was applied. A sum of ₹5,000/- was awarded for funeral expenses and ₹25,000/- for loss of consortium and ₹10,000/- for loss of estate.

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

Learned counsel for the appellants argued that the income assessed by the Tribunal is on the lower side. The deceased was getting a pension of ₹9,000/- per month and was also running an electric shop. He contended that the Tribunal has only considered the pension received by the deceased. He further argued that the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the respondents defended the award and argued that the claimants were not able to establish the occupation and the monthly income of the deceased. It was further submitted that the Tribunal has not considered ₹9,000/- per month as pension of the claimant but took it as the earning of the deceased. It was argued that the pension in the shape of family pension will be continued to be given to the family of the deceased.

No case is made out for enhancing the income assessed of the deceased by the Tribunal. The fact remains that he was getting ₹9,000/-as pension, there is nothing on record that how much family pension would be received by the family members after his death. There is no dispute on the proposition that the family pension cannot be deducted for the purpose of calculating the compensation to be awarded under Section 166 of the Act. In the absence of cogent evidence with regard to the fact that he was running a electric shop, no error can be found in the finding of the Tribunal assessing ₹9,000/- as the monthly earning of the deceased for the purpose of calculating the loss of dependency.

The contention raised by learned counsel for the appellants i.e. amounts awarded under the conventional heads are on the lower side, deserves acceptance.

In view of the decision of Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., AIR 2017 SC 5157*** the claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate and ₹40,000/- is awarded for loss of consortium to the widow. The net result is that the amount awarded under the conventional heads is enhanced by ₹30,000/-.

The award dated 30.09.2013 is modified to the extent that the amount of ₹4,00,000/-awarded by the Tribunal is enhanced by ₹30,000/-.

The claimants shall 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 appeal is partly allowed in the aforesaid terms.

**(AVNEESH JHINGAN)**
**JUDGE**

**19.11.2018**
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1.Whether the order is speaking/reasoned: Yes/No

2.Whether the order is reportable : Yes/No