

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

1. FAO No.1409 of 2015 (O&M)
Date of decision: 08.05.2018

National Insurance Co. Ltd. Appellant

Versus

Sandeepo and others Respondents

2. FAO No.2510 of 2015 (O&M)

Sandeepo and others Appellants

Versus

Satish Kumar and others Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Suvir Dewan, Advocate
for the appellant in FAO No.1409 of 2015 and
for respondent No.3 in FAO No.2510 of 2015.

Mr. J.S.Deswal, Advocate
for respondents No.1 to 4 in FAO No.1409 of 2015 and
for the appellants in FAO No.2510 of 2015.

Mr. Sunil Kumar, Advocate
for respondent No.5 in FAO No.1409 of 2015 and
for respondent No.1 in FAO No.2510 of 2015.

Avneesh Jhingan, J.

The present two appeals have been filed against award dated 25.11.2014 passed by Motor Accidents Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal').

The Insurance Company of the offending vehicle i.e. car bearing registration No.DL-8CG-1419 and the legal heirs of Dharampal have filed

these appeals being aggrieved of quantum of compensation awarded by the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

On 05.09.2013, Dharampal, after working in the fields of Pawan Kumar, was going back to his village Sandholi on bicycle. Near G.S.Farm on Kurukshetra-Pehowa road, a car bearing registration No.DL-8CG-1419 (for short, 'the offending vehicle') came from the opposite side and struck against the bicycle. As a result of the impact, Dharampal suffered serious injuries. He was shifted to Saraswati Mission Hospital, Pehowa and thereafter he was shifted to Anand Hospital, Kurukshetra. He was referred to GMCH, Sector-32, Chandigarh. He succumbed to injuries on 09.09.2013.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the widow, two minor children and mother of the deceased.

The Tribunal held that accident occurred due to rash and negligent driving of the offending vehicle. The age of the deceased was taken as 27 years. In consonance with the decision of **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77,** multiplier of 17 was applied and 1/4th deduction for self expenses was made. The Tribunal awarded a sum of Rs.16,82,500/- along with interest @ 7.5% per annum. The amount awarded includes Rs.4,00,000/-each for loss of love and affection, Rs.1,00,000/- loss of consortium, Rs.25,000 for funeral expenses and Rs.10,000/- for transportation charges.

In the appeal filed by the claimants, the grievance is that the deceased was working as a farm labourer and was earning Rs.9,000/- per

month, the Tribunal has assessed the income of the deceased as Rs.5,000/- per month which is even less than the minimum wages prevalent at that time.

In the appeal filed by the insurer, it has been contended that the Tribunal erred in adding 50% future prospects; no amount should have been awarded for loss of love and affection; and amounts awarded under the other conventional heads are on the higher side.

The age of the deceased was 27 years at the time of accident, the multiplier of 17 has been rightly applied as per Sarla Verma's Case (supra). The deceased was survived by four dependants, 1/4th deduction for self expenses has rightly been made.

The grievance of learned counsel for the claimants that the Tribunal erred in assessing the monthly earning of the deceased as Rs.5,000/- deserves acceptance. In the claim petition, it was pleaded that deceased was working in the fields of Pawan Kumar and after finishing his work he was going back home. In order to substantiate the claim, Pawan Kumar PW2 deposed before the Tribunal and stated that he was paying the deceased Rs.9,000/- per month. The said statement was not rebutted. The Tribunal only relied upon a general statement made by Pawan Kumar in cross examination that generally farm labourer is available in the village @ Rs.4000-5000/- per month. This nowhere diluted the statement made that deceased was being paid Rs.9,000/- per month. It is not always that a labourer is engaged at per the minimum wages prevalent at that time, the wages to be paid depends upon various factors like reliability, hard work or the period he had been in employment. In such circumstances, there was no occasion with the Tribunal to hold that the monthly earning of deceased was Rs.5,000/- per month. No

doubt, in absence of proof of earning, one of the safest yardstick to be relied upon is the minimum wages prevalent in the State. But it is not so in cases where the claimants have proved the earning of the deceased. The compensation would be awarded considering the monthly earning of the deceased as Rs.9,000/-.

The contention raised by learned counsel for the insurer that 50% future prospects have wrongly been awarded deserves acceptance. Having due regard to the decision of the Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157**, 40% future prospects would be added. The deceased was 40 years of age and comes within the category of having fixed salary or self employed.

Supreme Court in case of **Pranay Sethi's case (supra)** has held that no amount can be awarded for loss of love and affection and Rs.70,000/- is to be awarded under conventional heads i.e Rs.15,000/-for funeral expenses, Rs.15,000/- for loss of estate and Rs.40,000/- loss of consortium.

The compensation is recalculated as under :-

Monthly income	Rs.9,000/-
Annual income	Rs.1,08,000/-
40% future prospects	Rs.43,200/-
Total income	Rs.1,51,200/-
1/4th deduction for self expenses	Rs.37,800/-
Dependency	Rs.1,13,400 /-
Applying multiplier of 17	Rs.19,27,800/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Total	Rs.19,97,800/-

The award dated 25.11.2014 is modified to the extent that the

amount awarded by the Tribunal of Rs.16,82,500/- is enhanced to Rs.19,97,800/-.

The claimants would be entitled to enhanced amount along with interest @ 7.5% per annum as awarded by the Tribunal from the date of filing the claim petition till the realisation of the amount.

The appeals are partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

08.05.2018
anju

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