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

FAO No. 2194 of 2014
DECIDED ON: NOVEMBER 21, 2018

SUNITA AND OTHERS

.....APPELLANTS

VERSUS

RAJINDER @ CHANDGI AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Harish Goyal, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr. Subhash Goyal, Advocate
for respondent No.3-Insurance Company

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AVNEESH JHINGAN, J (ORAL)

The legal heirs of Jaspal Kumar (deceased) are in appeal against the award dated 04.01.2014 passed by Motor Accident Claims Tribunal, Sangrur (for short 'the Tribunal'). The appeal has been filed for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

2. The driver of truck tralla bearing registration No. HNB-1904 (hereinafter referred to as 'offending vehicle'); owner of the offending vehicle and insurer of the offending vehicle i.e. Bharti AXA General Insurance Company Ltd. have been arrayed as respondents No.1 to 3 respectively in the appeal.

3. The brief facts necessary for adjudication of the present appeal are that on 07.02.2012 (wrongly mentioned as 06.02.2012), Jaspal Kumar (deceased) alongwith Dharam Singh and Subhash Chand after loading peas in tempo bearing registration No. PB-13-AA-8261 (hereinafter referred to as 'tempo') started their journey. When they reached opposite Gupta Brick-Kiln village Bangawali the offending vehicle was standing on the road without lights or indicators, due to less visibility as it was early hours of the morning the tempo rammed into the offending vehicle. As a result of the accident, Jaspal Kumar suffered injuries and lost his life. FIR was registered at Police Station Sadar, Sangrur.

4. The widow, three minor children and mother of Jaspal Kumar (deceased) filed a claim petition under Section 166 of the Act before the Tribunal.

5. The Tribunal after considering the facts and appreciating the evidence adduced, held that there was a contributory negligence in the ratio of 70:30 i.e. 30% negligence was attributed to the driver of tempo in which Jaspal Kumar (deceased) was travelling. The Tribunal awarded a compensation to the tune of ₹9,00,040/- alongwith interest @7.5% per annum. The amount awarded includes ₹20,000/- each on account of funeral expenses and for loss of

consortium to the widow of the deceased.

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

7. Learned counsel for the appellants contended that the Tribunal erred in assessing the monthly income of the deceased as ₹7000/- especially when as per income tax return for the assessment year 2009-2010 (Ex.C-3) the gross income of the deceased was ₹1,60,000/-. The grievance is that the Tribunal awarded future prospects of 30% instead of 40%. He further argued that the amount awarded under the conventional heads are on lower side.

8. Learned counsel for the insurer defended the award and argued that from the income tax return (Ex.C3), it is evident that income of deceased including business, profession and other sources was ₹1,18,500/-. He could not raise any serious dispute with regard to awarding of 40% future prospects in consonance with ***National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009*** and ***Hem Raj vs. Oriental Insurance Company*** Ltd ;**2018 (2) PLR 480.**

9. There is no dispute between the parties regarding age of the deceased i.e. 37 years; ¼ deduction made for self expenses and multiplier applied of 15.

10. The contention of learned counsel for the appellants deserves acceptance.

11. An official from the Income Tax Department appeared as CW-3 and proved on record the income tax return of the deceased Ex.C3. He also identified the signatures of Income Tax Officer on Ex.C3. From perusal of return it is evident that income of the deceased for the assessment year 2009-2010 i.e financial year 2008-2009 from the profit and gains from business was

₹1,18,500/-. Though, he was having income of ₹41,700/- from other sources, the same cannot be considered for the purpose of calculation of compensation to be awarded. The income generated from other sources would continue even after the death of the deceased. According to income tax return the total tax payable was ₹ 330/- and the said amount is deducted from ₹ 1,18,500/-. For rounding of figure the income of the deceased is taken as ₹ 1,18,000/-.

12. Having due regard to the decisions of the Supreme Court in ***Pranay Sethi (Supra) and Hem Raj (Supra)***; 40% future prospects is awarded. Claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate. Further ₹40,000/- is awarded to widow for loss of consortium.

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

	Head	**Compensation awarded**
(i)	Annual Income	₹1,18,000/- per annum
(ii)	Future prospects at 40%	₹ 47,200/-
(iii)	Total Income	₹ 1,65,200/-
(iv)	Deduction of personal expenses	₹ 41300/- (i.e. 1/4th of total income)
(v)	Multiplier	15 (as per age of deceased)
(vi)	Total Dependency	₹ 1,23,900/-x15=₹ 18,58,500/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹ 40,000/-
	Total compensation	₹ 19,28,500/-

14. The award dated 04.01.2014 is modified to the extent that amount awarded of ₹9,00,040/- is enhanced to ₹19,28,500/-.

15. The claimants shall be entitled to interest @7.5% per annum from the

date of filing of claim petition till realization of the amount awarded by this Court.

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

(AVNEESH JHINGAN)
NOVEMBER 21, 2018 **JUDGE**
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No