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

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FAO No.1126 of 2016 (O&M)
Date of Decision: 03.12.2018

Ruksina and others

Appellants

Versus

Jabbar Khan and others

Respondents

FAO No.7913 of 2015 (O&M)

Shabnam and others

Appellants

Versus

Jabbar Khan and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Neha Rana, Advocate for
Mr. Abhimanyu Singh, Advocate
for the appellants [in FAO No.1126 of 2016].

Mr. Barjinder Singh, Advocate for
Mr. Ashish Gupta, Advocate
for the appellants [in FAO No.7913 of 2015].

Mr. Suman Jain, Advocate
for the Insurance Company.

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AVNEESH JHINGAN, J (Oral):

This order shall dispose of two appeals arising out of the award dated 04.04.2015 passed by the Motor Accident Claims Tribunal, Mewat [hereinafter referred to as 'the Tribunal'] in MACT No.75 of 2014 and MACT No.76 of 2014. Both the appeals arise out

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of the same award and from the same accident, hence, these are being disposed of by a common order.

The awards have been assailed by the legal heirs of Nasruddin and Wakil seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The facts of the case are that 22.05.2014 Nasruddin alongwith Wakil were going to Sikrawa by a Tempo bearing registration No. HR-74A-3164. When they reached near Sikarwa brick-kiln, a rashly and negligently driven dumper bearing registration No. HR-74-7754 [hereinafter referred to as 'offending vehicle'] struck the tempo. As a result of the impact, Nasruddin and Wakil suffered injuries. Wakil died at the spot. Nasruddin was shifted to General Hospital, Mandikhera but he lost his life on his way to the hospital.

Claim petitions under Section 166 of the Act were filed. One petition was filed by widow, 2 minor children and parents of Nasruddin (numbered as MACT No.75 of 2014) and another by widow, 2 minor children and parents of Wakil (numbered as MACT No.76 of 2014). The Tribunal after considering the facts and appreciating the evidence adduced, held that accident was caused due to 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 ₹13,03,600/- alongwith interest @ 7% per annum in both the

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appeals. The said amount included ₹20,000/- each for funeral expenses and loss of consortium.

The claimants in both the claim petitions pleaded that both the deceased were Mason and were 25 years old. There was no cogent evidence with regard to monthly income of the deceased. The Tribunal assessed the monthly earning of the deceased as ₹5,200/- relying upon the minimum wages prevalent in the State at the time of accident in respect of an unskilled labourer. 50% future prospects were awarded; 1/4th deduction for self expenses was made and multiplier of '18' was applied in both the claim petitions.

Heard learned counsel for the parties, perused the paper book and relevant documents produced.

Learned counsel for the appellants contended that the deceased were working as Mason, the Tribunal erred in relying upon the minimum wages of unskilled labourer. The grievance raised is that amounts awarded under the conventional heads are on the lower side and no amount has been awarded for loss of estate.

Learned counsel for the insurer defends the award and argued that the claimants failed to prove occupation and monthly earning of the deceased, hence the Tribunal has rightly assessed the monthly earning as ₹5,200/-. It is argued that the Tribunal erred in awarding 50% future prospects instead of 40%.

The contentions raised by learned counsel for the appellants deserve acceptance. The claimants failed to adduce any

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evidence with regard to monthly earning of the deceased. It was pleaded that deceased were working as Mason. There is no evidence on record to substantiate the same or any rebuttal by the insurer to the said fact. In such circumstances, it would not be appropriate to equate the deceased with an un-skilled labourer, hence, minimum wages for a semi-skilled labourer are taken for calculating the loss of dependency. The minimum wages for a semi-skilled labourer were ₹5,807/- per month at the time of accident in the State of Haryana. The same are rounded off to ₹5,800/- for calculation purpose.

As the quantum of compensation is being revisited, it would be appropriate that the future prospects and conventional heads are awarded in consonance with the decisions 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.*** Both the deceased were 25 years old at the time of accident and were self-employed, hence 40% future prospects are awarded. The claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to the widows for loss of consortium.

There is no dispute with regard to 1/4th deduction made for self-expenses and multiplier applied of '18'.

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

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Particulars	***Amount (in ₹)***
Monthly income of the deceased as assessed	5,800/-
40 % Future Prospects	2,320/-
Sub Total	8,120/-
1/4th deduction for self expenses	2,030/-
Monthly Dependency	6,090/-
Annual Dependency	73,080/-
Applying multiplier of 18	**13,15,440/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Grand Total	**13,85,440/-**

Both the award dated 04.04.2015 are modified to the extent that amounts awarded of ₹13,03,600/- by the Tribunal are enhanced to ₹13,85,440/-. The amount awarded for loss of consortium to both the widows shall be disbursed to the widows and the balance amount shall be disbursed to the claimants in the same proportion as was held by the Tribunal.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

Both the appeals are partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

December 03, 2018
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1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No

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