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

**F.A.O. No. 221 of 2015 (O&M)**

**Date of Decision: 01.05.2018**

Veena .......Appellant

**Versus**

Sudharkar and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. K.B. Raheja, Advocate
for the appellant.

Mr. Chandandeep Singh, Advocate
for respondent No.3-Insurance Company.

**<u>AVNEESH JHINGAN, J.(oral)</u>**

The present appeal has been filed by an unfortunate mother who lost her 20 years old son in a motor vehicular accident that took place on 10.11.2013.

Rohit Lunihal was going on his motor cycle bearing registration No. HR-99-RBT-8316. The motor cycle was hit by a rashly and negligently driven Truck Mixer bearing registration No.HR-55-Q-3667 (for short 'the offending vehicle'). Rohit Lunihal was crushed under the front wheel of the truck. He died at the spot. FIR No. 837 dated 10.11.2013 was registered at Police Station Sector-7, Faridabad.

Mother of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Motor Accident Claims Tribunal, Faridabad (for short 'the Tribunal') vide its award dated 21.07.2014 awarded a sum of Rs.5,40,000/- along with interest at the rate of Rs.7.5% per annum.

The present appeal has been filed for enhancement of compensation. It is stated that the deceased was working with his father and were running a cloth shop, his earning was Rs.25000/- per month. The grievance is that the income assessed as Rs.5000/- is on lower side. The contention raised is that no future prospects have been added and no amount has been awarded under conventional heads

The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The age of the deceased was proved as 20 years. He was a Bachelor. ½ deduction for self expenses were made and multiplier of 18, which is in consonance with the decision of Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another,** 2009(6)SCC 121, was applied.

Though it is not possible to compensate a mother for loss of his only son aged 20 years. The duty is casted upon the Courts to award a just and equitable compensation.

A claim regarding the income of the deceased was made but there was no proof produced either to prove his earning or to prove that he was running a cloth shop. In such a situation the safest yardstick would be to rely upon the minimum wages prevalent in the State, at the time of the accident.

In view of the facts of the present case, it would not be appropriate to restrict the earning of the deceased on the exact figure of minimum wages prevalent for the unskilled labourer. Considering the age of the deceased, the monthly income of the deceased is assessed as Rs.5500/- The contentions raised by learned counsel for the appellant regarding future prospects and the amount to be awarded under conventional heads deserve acceptance in view of the decision of Supreme Court in **National**

**Insurance Company Limited Versus Pranay Sethi and others**, 2017 AIR (SC) 5157.

The deceased was 20 years of age and will fall within the category of having a fixed salary or self employed. Hence, 40% future prospects are to be added. The appellant would be entitled to Rs.15,000/- each for funeral expenses and loss of estate.

The Compensation is re-calculated as under:

| | |
|---|---|
| Monthly earning | Rs.5,500/- |
| 40% future prospects | Rs.2,200/- |
| | Rs.7,700/- |
| ½ self expenses | Rs.3,850/- |
| Multiplier of 18 | (3850x18x12) |
| | Rs.8,31,600/- |
| Conventional heads (Funeral expenses and loss of estate Rs.15000/- each) | Rs.30,000/- |
| Total | Rs.8,61,600/- |

The award dated 21.07.2014 is modified to the extent that the amount awarded of Rs.5,40,000/- is enhanced to Rs./-8,61,600/-.

The claimant would be entitled to enhanced amount alongwith interest at the rate as awarded by the Tribunal from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the aforesaid terms.

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

**01.05.2018**
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No