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

**FAO No.1866 of 2016 (O&M)
Date of Decision: 05.12.2018**

Manoj and others

Appellants

Versus

Rajbir and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vijay Sangwan, Advocate
for the appellants.

Mr. Vijay, Advocate
for respondent No.1.

Ms. Manjeet Kaur, Advocate for
Mr. Pankaj Mehta, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 28.08.2015 passed by the Motor Accident Claims Tribunal, Narnaul [hereinafter referred to as 'the Tribunal'] has been assailed by the legal heirs of Sajjan Singh (deceased) for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The appellants are widow, minor son and parents of the deceased. The driver of truck bearing registration No. HR-63A-4078 [hereinafter referred to as 'offending vehicle'], owner and insurer i.e. Magma HDI General Insurance Company Ltd. of offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present

appeal are that a motor vehicular accident took place on 03.03.2014. Sajjan Singh and Gajender Singh were going to village Karota from Narnaul by car bearing registration No. DL8C-AW-1149. When they reached near City Marriage Palace at Narnaul-Nizampur road, their car was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Sajjan Singh sustained injuries. He was taken to Civil Hospital, Narnaul where he was declared dead. FIR No.71, dated 03.03.2014 was registered.

A claim petition under Section 166 of the Act was filed. 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 owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹7,79,400/- alongwith interest @ 9% per annum. The said amount included ₹20,000/- for transportation & last rites and ₹25,000/- for loss of consortium.

The claimants in claim petition pleaded that the deceased was 25 years of age. He was a Clerk in a brick kiln as well as an agriculturist. However, they failed to substantiate the claim regarding the occupation and monthly earning of the deceased by adducing cogent evidence. In absence of any proof, the Tribunal treated the deceased as an unskilled labourer and assessed his monthly income as ₹4,800/-, 1/4th deduction for self expenses was made and multiplier of "17" was applied, as per the age of the deceased.

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

Learned counsel for the appellants has raised four grievances. Firstly, that minimum wages prevalent in the State of Haryana for an unskilled labourer were ₹5,547/- and the Tribunal erred in assessing the monthly income of the deceased as ₹4,800/-. Secondly, no future prospects have been awarded; thirdly, multiplier of '17' has been wrongly applied even when the Tribunal accepted the age of the deceased as 25 years and fourthly, that the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer defended the award. It is contended that the claimants failed to prove monthly earning of the deceased, hence, the Tribunal assessed the monthly earning of the deceased as ₹4,800/-.

The contentions raised by learned counsel for the appellants deserve acceptance. In case where the claimants fail to substantiate the occupation and monthly earning of the deceased, the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of the accident. In the State of Haryana, minimum wages were ₹5,547/- in March, 2014. The compensation is calculated by taking monthly income of the deceased as ₹5,550/-.

Having due regard to the decision 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, 40% future prospects are awarded.

The deceased was 25 years old at the time of accident, hence, in consonance with the decision of the Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,** multiplier of '18' is applied.

There is no dispute amongst the parties with regard to 1/4th deduction made for self expenses.

As the quantum of compensation is being revisited, the amount awarded under the conventional heads are being made in consonance with the decision of the Supreme Court in **Pranay Sethi's** case (supra). The claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded for loss of consortium to the widow.

In view of above discussion, the compensation re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased assessed	5,550/-
40 % Future Prospects	2,220/-
Sub Total	7,770/-
1/4 th deduction for self expenses	1,943/-
Monthly Dependency	5,827/-
Annual Dependency	69,924/-
Applying multiplier of '18'	12,58,632/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of consortium to widow	40,000/-
Grand Total	13,28,632/-

The award dated 28.08.2015 is modified to the extent that amount of ₹7,79,400/- awarded by the Tribunal is enhanced to ₹13,28,632/-. The amount awarded for loss of consortium to widow shall be disbursed to widow and the balance compensation 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.

The appeal is partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

December 05th, 2018

pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |