

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

**FAO No.3130 of 2015
Date of decision: 26.11.2018**

Hari Ram

...Appellant

Versus

Mahesh Singh and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Janya Sirohi, Advocate
for Mr. Akshay Jindal, Advocate
for the appellant.

Mr. Gopal Mittal, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J. (ORAL)

The award dated 01.11.2014, passed by Motor Accident Claims Tribunal, Panipat (for short, 'the Tribunal') has been assailed by the legal heirs of Joginder seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The brief facts necessary for adjudication of the present appeal are that on 05.03.2011 Joginder (deceased) and Vinod were coming from Samalkha in a Scorpio bearing registration No. HR-56A-3366 which was being driven by Vinod. When they reached near Vardhman Motor Agency, the Scorpio was over-taken by a rashly and negligently driven tanker bearing registration No.HR-38D-9962 (for short 'offending vehicle'). After overtaking, the driver of the offending vehicle suddenly applied brakes as a

result of which the Scorpio dashed into the tanker. Both Joginder and Vinod suffered multiple injuries and were admitted in Community Health Centre, Samalkha where Joginder succumbed to injuries sustained in the accident. FIR No. 196, dated 07.03.2011, was registered under Sections 279, 337 and 304-A IPC, at Police Station Samalkha.

The widow, two minor children and parents of the deceased filed a petition under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced, held that the 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. A sum of ₹ 7,51,000/- was awarded by the Tribunal along with interest @ 7.5% per annum.

The age of the deceased at the time of accident was 35 years. The monthly income of the deceased was assessed as ₹ 4800/-; 1/4th deduction for self expenses was made and multiplier of 16 was applied. The Tribunal awarded a sum of ₹20,000/- each for loss of consortium, loss of love and affection and last rites.

Heard learned counsel for the parties, perused the paperbook and the relevant documents.

There is no dispute between the parties with regard to the loss of dependency calculated by the Tribunal.

Learned counsel for the appellant argues that no future prospects has been awarded and the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer vehemently defended the award and resisted any further enhancement.

Having due regard to the decisions of the Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and Others 2017 (4) RCR (Civil) 1009** and **Hem Raj Vs. Oriental Insurance Company Ltd., 2018 (2) PLR 480**. 40% future prospects are awarded. Since there is no dispute with regard to loss of dependency, i.e., ₹ 6,91,200/- calculated by the Tribunal for loss of dependency, 40% of the said amount is awarded as future prospectus i.e. ₹ 2,76,480/-.

The claimants are also entitled to ₹ 15,000/- each for funeral expenses and loss of estate. ₹ 40,000/- is awarded for loss of consortium to the widow. No amount can be awarded for loss of love and affection as per **Pranay Sethi's** case (supra).

The award dated 01.11.2014 is modified to the extent that the amount awarded of ₹ 7,51,000/- is enhanced by ₹ 2,86,480/-. The claimants shall be entitled to the enhanced compensation along with interest at the rate of 7.5% per annum from the date of filing of the claim petition, till its realization.

The appeal is partly allowed in the aforesaid terms.

November 26, 2018
Poonam (II)

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No