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

****

**FAO No.4811 of 2014
Date of Decision: 14.12.2018**

Yadwinder Singh and another

Appellants

Versus

Bhima and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sahil Abhi, Advocate
for the appellants.

Ms. Sonia Rani, Advocate for
Mr. Sanjeev Goyal, Advocate
for the Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 08.01.2014 passed by the Motor Accident Claims Tribunal, Ludhiana [for brevity 'the Tribunal'] has been assailed by the husband and minor son of Kuldeep Kaur seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver of truck bearing registration No. PB-65H-7854 [hereinafter referred to as 'offending vehicle'], owner and insurer [i.e. Bharti Axa General Insurance Co. Ltd.] of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

Respondents No.1 and 2 did not put in appearance inspite of service and were proceeded *ex-parte* vide order dated 20.10.2015.

The facts emanating from the record are that on 10.08.2011, Kuldeep Kaur, aged 39 years, was driving her Moped bearing registration No. PB-26C-5765. On her way, near Post Office situated at G.T. Road, her Moped was struck by a rashly and negligently driven offending vehicle, as a result of the impact, she fell down and was ran over by the offending vehicle. She died at the spot. FIR No.139, dated 10.08.2011 was registered at Police Station City Khanna.

A claim petition under Section 166 of the Act was filed. The Tribunal, after considering the facts and appreciating the evidence adduced, held that the accident was caused due to the 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 a sum of ₹17,75,000/- alongwith interest @ 7.5% per annum. The said amount included ₹1,00,000/- for loss of consortium, ₹30,000/- for loss of care and guidance of minor children and ₹25,000/- for funeral expenses.

In the claim petition it was claimed that the deceased was a Beautician by profession and used to visit houses of people for her work, her Income Tax Return was exhibited. The Tribunal after considering the Income Tax Return assessed monthly earning of the deceased as ₹12,000/-. 50% future prospects were awarded, ½ deduction for self-expenses was made and multiplier of '15' was applied.

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

Learned counsel for the appellants contends that the deceased was survived by husband and minor child. The Tribunal erred in making ½ deduction for self-expenses instead of 1/3rd. His grievance is that no compensation for loss of estate has been granted.

Learned counsel for the insurer defended the award. She argues that the amount awarded for loss of consortium and funeral expenses are on the higher side and no amount should be granted for loss of care and guidance to the minor child.

There is no dispute between the parties with regard to income assessed and multiplier applied.

The contentions raised by learned counsel for the parties deserve acceptance. The deceased was survived by husband and minor child. In consonance with decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** 1/3rd deduction for self-expenses is made.

The deceased was 39 years old and was working as a Beautician. Having due regard to 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***, 40% future prospects are to be awarded instead of 50%. The claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- is awarded to the husband for loss of consortium.

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

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	12,000/-
40% Future Prospects	4,800/-
Sub Total	16,800/-
1/3rd deduction for self expenses	5,600/-
Monthly Dependancy	11,200/-
Annual Dependancy	1,34,400/-
Applying multiplier of 15	**20,16,000/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to husband	**40,000/-**
Grand Total	**20,86,000/-**

The award dated 08.01.2014 is modified to the extent that amount awarded of ₹17,75,000/- by the Tribunal is enhanced to ₹20,86,000/-.

The claimants shall be entitled to the 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 14th, 2018
pankaj baweja

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