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

**FAO No. 2191 of 2016
DECIDED ON: DECEMBER 18, 2018**

SUNITA & ANOTHER

.....APPELLANTS

VERSUS

BHAVESH KUMAR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Chandandeep Singh, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate
for respondent No.3.

AVNEESH JHINGAN J. (ORAL)

The unfortunate parents who have lost their young son in a motor vehicular accident are in appeal against the award dated 26.11.2015 passed by the Motor Accident Claims Tribunal, Ludhiana (for brevity 'the Tribunal') seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The driver of Alto car bearing registration No. CH-04-F-7531 (hereinafter referred to as 'offending vehicle'); owner and insurer (i.e. United India Insurance Co. Ltd.) of the offending vehicle have been arrayed as respondents no. 1 to 3 respectively in the appeal.

The facts emanating from the record are that on 17.08.2014, Sagar

Kumar Kalyan (deceased) alongwith Ravi Shankar and Rajan and some other persons went to Dera Baba Mannat Ram Ji in Village Ucha Jatana and from there, he left for Samrala. The deceased was pillion rider on the motorcycle bearing registration No. PB-43-D-3608, which was being driven by Rajan. On their way they stopped their motorcycle on the side of the road, in the meanwhile, their motorcycle was hit by a rashly and negligently driven offending vehicle. Due to the impact, both the riders of the motorcycle fell down and Sagar Kumar Kalyan sustained injuries and was taken to Civil Hospital, Samrala from where he was referred to other hospital ultimately he was taken to Fortis Hospital, Ludhiana where he was declared dead. FIR No. 189, dated 18.08.2014 was registered at Police Station Samrala.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on 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 compensation of ₹5,65,000/- alongwith interest @ 6% per annum. The amount awarded included ₹25,000/- for funeral expenses.

In the claim petition, it was pleaded that the age of the deceased at the time of accident was 19 years and was working as Manager with Aman D.J. System, Samrala. It was pleaded that he was drawing monthly salary of ₹15,000/-, the claimants failed to produce any cogent evidence with regard to the occupation and monthly earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹5000/- per month. ½ deduction was made for self-expenses and multiplier of 18 was applied.

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

Learned counsel for the appellants contends that the Tribunal erred in assessing the monthly income of the deceased as ₹5000/-, which is less than even the minimum wages for an un-skilled labourer. His grievance is that no future prospects have been awarded and the amount awarded under the conventional heads are on lower side.

Learned counsel for the insurer defends the award and argues that the claimants failed to substantiate the occupation and monthly earning of the deceased. At the most, the deceased can be equated with an un-skilled labourer. His grievance is that the amount awarded for funeral expenses is on the higher side.

There is nothing on record to prove the occupation and monthly earning of the deceased. Even, nothing has come on record with regard to his qualification. In the cases where the claimants failed to substantiate the monthly earnings of the deceased, the safest yardstick would be to rely upon the minimum wages prevalent in the State at the time of accident. The minimum wages at the time of accident in the State of Punjab for an unskilled labourer was ₹6,467/-. For the purpose of calculation, the same is rounded off to ₹6,500/-.

Having due regard to the decisions of the Supreme Court in ***National Insurance Co. 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. Claimants are also entitled to ₹15000/- each for funeral expenses and for loss of estate.

There is no dispute between the parties with regard to ½ deduction made for self-expenses and applying of multiplier of 18, which are in consonance with the decision of the Supreme Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another;*** ***(2009) 6 SCC 121.***

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

	Head	**Compensation awarded**
(i)	Income	₹ 6500/- per month
(ii)	Future prospects at 40%	₹ 2600/- per month
(iii)	Total Income	₹ 9100/- per month
(iv)	Deduction of personal expenses	₹4550/- (i.e. 1/2nd of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	4550x12x18= ₹9,82,800/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹10,12,800/-

The award dated 26.11.2015 is modified to the extent that amount of ₹5,65,000/- awarded by the Tribunal is enhanced to ₹10,12,800/-. The appellants shall be entitled to the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is partly allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

DECEMBER 18, 2018
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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No