IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2202 of 2016 (O&M)
DECIDED ON: DECEMBER 07, 2018

SUBE SINGH AND ANOTHER

.....APPELLANTS

VERSUS

ZILE SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Vipul Sharma, Advocate for
Mr. Rajesh Bansal, Advocate
for the appellants.

Mr. Tarun Yadav, Advocate for
Mr. Tapan Kumar Yadav, Advocate
for respondents No. 1 and 2.

Mr. Amit Goyal, Advocate
for respondent No.3.

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AVNEESH JHINGAN, J (ORAL)

The award dated 15.10.2015 passed by Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal') has been assailed by the parents of Ashok (deceased) 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. HR-66-4205 (hereinafter

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referred to as 'offending vehicle'), owner and insurer of the offending vehicle i.e. The Oriental Insurance Company Ltd. have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts emanating from the record are that on 04.01.2014, Zile Singh alongwith Ashok and others started their journey from Jaipur to Indore after loading three buffalo and five cows in the offending vehicle. The offending vehicle was being driven by Zile Singh in a rash and negligent manner. When they reached near Khoria Bus Stand Umtel turn, the offending vehicle struck against a tree, as a result of the impact, Ashok sustained injuries and lost his life. FIR was registered.

The parents of Ashok filed a claim petition under Section 166 of the Act before the Tribunal. 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 owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a compensation to the tune of ₹5,38,500/- alongwith interest @9% per annum. The amount awarded included ₹20,000/- for transportation and funeral expenses.

The claimants pleaded before the Tribunal that the deceased was the second driver on the offending vehicle and was earning ₹10,000/- per month but they failed to adduce any cogent evidence to substantiate the monthly earning of the deceased. The driving licence of the deceased valid for driving Heavy Motor Vehicle was exhibited before the Tribunal. The Tribunal assessed the monthly income of the deceased as ₹4800/- per month, ½ deduction was made for self-expenses and multiplier of 18 was applied.

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

Learned counsel for the appellants argues that the deceased was a Truck driver and the Tribunal erred in assessing the monthly income of the deceased as ₹4800/- per month, which is even less than the minimum wages for an unskilled labourer. He contends that the deceased should have been treated as semi-skilled, being driver. The grievance is that no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer defended the award and contended that the claimants failed to substantiate the monthly earning of the deceased. He was merely a matriculate and was a driver, hence, the Tribunal rightly assessed the monthly income of the deceased as ₹4800/- per month.

The contention raised by learned counsel for the appellants deserve acceptance.

Albeit, claimants failed to substantiate the monthly earning of the deceased but there is no serious dispute that the deceased was the second driver on the offending vehicle and was having a valid driving licence of heavy motor vehicle. In such circumstances the safest yardstick is to rely upon the minimum wages for a semi-skilled labourer prevalent in the State at the time of accident. In the State the minimum wages for a semi-skilled labourer at the time of accident was ₹5807/-. The same is rounded of to ₹5850/- for the purpose of calculation of loss of dependency.

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;**

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keeping in view the age of the deceased as 24 years, 40% future prospects are awarded. Claimants are entitled to a sum of ₹15,000/- each for funeral expenses and for loss of estate.

There is no dispute between the parties with regard to the ½ deduction made for self expenses and applying of multiplier of 18.

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

	Head	**Compensation awarded**
(i)	Income	₹5850/- per month
(ii)	Future prospects at 40%	₹2340/- per month
(iii)	Total Income	₹8190/- per month
(iv)	Deduction of personal expenses	₹4095/- (i.e. 1/2 of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Total Dependency	₹4095/-x12x18=₹8,84,520/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹9,14,520/-

The award dated 15.10.2015 is modified to the extent that the amount awarded of ₹5,38,500/- is enhanced to ₹9,14,520/-. The appellants shall be entitled to interest @7.5 % per annum on the enhanced amount of compensation from the date of filing of claim petition till the realization of the amount.

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

(AVNEESH JHINGAN)
JUDGE

DECEMBER 07, 2018
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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