

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

**FAO No. 5702 of 2013 (O&M)
DECIDED ON: DECEMBER 11, 2018**

FARMINA AND OTHERS

.....APPELLANTS

VERSUS

ARSHAD AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Rajesh Lamba, Advocate
for the appellants.

Mr. A.S. Sidhu, Advocate and
Mr. Aman Mittal, Advocate
for respondent No.3.

AVNEESH JHINGAN, J (ORAL)

The award dated 08.04.2013 passed by Motor Accident Claims Tribunal, Faridabad (for short 'the Tribunal') in MACT case No. 56 of 2012 has been assailed by the legal heirs of Mehrab (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The widow and two minor children of Mehrab (deceased) are the appellants. The driver of dumper bearing registration No. HR-38-Q-7992

(hereinafter referred to as 'offending vehicle'); owner and insurer of the offending vehicle i.e. ICICI Lombard General Insurance Co. Ltd. have been arrayed as respondents No.1 to 3 respectively in the appeal. The mother of the deceased has been arrayed as respondent No.4 in the appeal.

The facts necessary for the adjudication of the present appeal are that on 02.08.2011, Rafiq was getting his truck bearing registration No. HR-38-N-9686 repaired after switching on its indicator. In the meantime, a rashly and negligently driven offending vehicle hit the truck from behind. As a result of the impact, Rafiq and Mehrab sustained grievous injuries. Mehrab was taken to B.K. Hospital, Faridabad where he was declared dead. FIR No. 364, dated 03.08.2011, under Sections 279, 337, 304-A and 427 of the Indian Penal Code, 1860 was registered at Police Station Sector 55, Faridabad.

The legal heirs of Mehrab (deceased) 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 the 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 ₹6,62,472/- alongwith interest @7.5% per annum. The amount awarded included ₹10,000/- for loss of consortium to the widow, ₹5000/- for funeral expenses and ₹2000/- for transportation.

The claimants in the claim petition pleaded that the deceased was working as a driver and was earning ₹10,000/- per month. The claimants failed to adduce any evidence with regard to the occupation and monthly earnings of

the deceased. The Tribunal relying upon the minimum wages of an unskilled labourer assessed the monthly earning of the deceased as ₹4600/- per month. 1/3rd deduction for self-expenses was made and multiplier of 18 was applied.

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

Learned counsel for the appellants contended that no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side. His further grievance is that the minimum wages for an unskilled labourer at the time of accident were ₹4643/- and the Tribunal erred in rounding it to ₹4600/-.

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

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

There is no dispute between the parties regarding deduction made for self-expenses, multiplier applied and that the Tribunal rightly relied upon the minimum wages for an unskilled labourer to assess the income of the deceased.

The only dispute is that the Tribunal rounded it on lower side i.e. ₹4600/- per month. The compensation would be calculated by rounding off it to ₹4650/- per month.

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 a sum of ₹15,000/- each, for funeral expenses and for loss of estate. Further an amount of

₹40,000/- is awarded to the widow for loss of consortium.

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

	Head	Compensation awarded
(i)	Income	₹4650/-/- per month
(ii)	Future prospects at 40%	₹1860/- per month
(iii)	Total Income	₹6510/- per month
(iv)	Deduction of personal expenses	₹2170/- (i.e. 1/3 th of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Total Dependency	₹4340x12x18=₹9,37,440/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of Consortiuim	₹40,000/-
	Total Compensation awarded	₹10,07,440/-

The award dated 08.04.2013 is modified to the extent that the amount awarded of ₹6,62,472/- is enhanced to ₹10,07,440/-. The appellants shall be entitled to interest @7.5 % per annum on the enhanced amount of compensation from the filing of claim petition till the realization of the amount.

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

DECEMBER 11, 2018
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No

**CM No. 23902-CII of 2013 in
FAO No. 5702 of 2013**

FAMINA AND OTHERS

V.

ARSHAD AND OTHERS

Present: Mr. Rajesh Lamba, Advocate
for the applicants/appellants.

Mr. A.S. Sidhu, Advocate and
Mr. Aman Mittal, Advocate
for respondent No.3.

In view of averments made in the application the same is allowed and
delay of 30 days in filing the appeal is condoned.

CM stands disposed of.

DECEMBER 11, 2018
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(AVNEESH JHINGAN)
JUDGE