

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

**FAO No. 5204 of 2014 (O&M)
DECIDED ON: NOVEMBER 27, 2018**

SANTOSH AND OTHERS

.....APPELLANTS

VERSUS

RAHIL AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. B.K. Bagri, Advocate
for the appellants.

Mr. Raj Kumar Bashamboo, Advocate
for respondent No.3-Insurance Company

AVNEESH JHINGAN, J (ORAL)

Vide order dated 12.05.2017, the present FAO was admitted and it was ordered to be listed for hearing within one year.

2. Service of respondent No.1 is not complete, as learned counsel for the appellants has not filed the correct address of respondent No.1 till today. Respondent No.2 was proceeded ex-parte vide order dated 04.09.2015. From perusal of award dated 26.08.2013, it is evident that owner, driver and insurer

were held jointly and severally liable to pay the compensation. The insurer of truck (TATA) bearing registration No. HR-38-D-8665 (hereinafter referred to as 'offending vehicle') is duly represented by its counsel. Hence, the main appeal is taken up for final hearing on merits today itself with the consent of both the parties.

3. The widow, two sons and daughter of Rajender Singh (deceased) are in appeal against the award dated 26.08.2013 passed by Motor Accident Claims Tribunal, Rewari (for short 'the Tribunal'). The appeal has been filed for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

4. The driver, owner and insurer of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

5. The brief facts necessary for adjudication of the present appeal are that on 19.07.2011, Rajender Singh (deceased) alongwith his friend was going on his motorcycle bearing registration No. DL-7SZ-3086. When he reached near telephone exchange Sector 37, Gurgaon, his motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Rajender Singh suffered multiple injuries and died at the spot. FIR No. 246, dated 20.07.2011, under Sections 304-A, 279, 337 and 338 of the Indian Penal Code, 1860 was registered.

6. The legal heirs of deceased filed a claim petition under Section 166 of the Act before the Tribunal.

7. The Tribunal after considering the facts and appreciating the evidence adduced, held that the accident occurred 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 ₹18,21,500/- alongwith interest @6% per annum. The amount awarded included ₹ 5000/- for loss of consortium to the widow and ₹ 3000/- on account of funeral expenses.

8. The income of the deceased was proved as ₹ 15,500/- per month; ¼ deduction was made for self expenses and multiplier of 13 was applied.

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

10. Learned counsel for the appellants contended that no future prospects have been awarded and the amount awarded under the conventional heads are on the lower side.

11. Learned counsel for the insurer defended the award but could not raise any serious objection against awarding future prospects and enhancing the amount under the conventional heads in view of the decisions of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009.***

12. Claimants are entitled to a sum of ₹15,000/- each for funeral expenses and for loss of estate. Further ₹ 40,000/- is awarded to the widow of the deceased for loss of consortium.

13. It has been proved by the claimants that the deceased was employed and was having fixed wages. There is a minor dispute with regard to the age of the deceased at the time of accident. It was pleaded that the deceased was 48 years old, as per post-mortem report his age at the time of accident was 50 years. The age mentioned in the post-mortem report is only an estimation, in

the facts of the case, the age of the deceased is taken to be in age group of 40-50. Hence, 25% future prospects are awarded.

14. As there is no dispute between the parties with regard to loss of dependency calculated by the Tribunal of ₹ 18,13,500/-, 25% of the said amount i.e. ₹ 4,53,375/- is awarded for future prospects. The amount awarded under conventional heads is enhanced by ₹ 62,000/-

15. The award dated 26.08.2013 is modified to the extent that amount awarded of ₹18,21,500/- is enhanced by ₹5,15,375/-. The appellants shall be entitled to enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of amount.

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

NOVEMBER 27, 2018
sham

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned ***Yes/No***
Whether reportable ***Yes/No***