

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 276 of 2016

DECIDED ON: DECEMBER 06, 2018

KAMLESH AND OTHERS

.....APPELLANTS

VERSUS

RAM BABU KHUSHWAH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Tapish Gupta, Advocate
for the appellants.

Mr. Amit Kundu, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J (ORAL)

The award dated 22.09.2015 passed by Motor Accident Claims Tribunal, Kaithal (for short 'the Tribunal') has been assailed by the legal heirs of Pawan (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The parents and three siblings of Pawan (deceased) are the appellants. The driver of Tata Truck bearing registration No. MP-07L-0555 (hereinafter referred to as 'offending vehicle'); owner and insurer of the offending vehicle i.e. The New India Assurance Co. Ltd. have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts of the case are that on 19.03.2014, Surjan Singh was driving the Harvester bearing registration No. HR-931. He was returning back

to his native village alongwith his nephew Pawan. When they reached near AB road, village Goi, Sendhwa (MP), the Harvester was hit from behind by a rashly and negligently driven offending vehicle. As a result of the impact, both harvester and offending vehicle turned turtle, Pawan who was sitting on the Harvester, fell down and got crushed. FIR was registered.

The legal heirs of Pawan (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 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 of ₹6,59,000/- alongwith interest @9% per annum. The amount awarded included ₹1,25,000/- for loss of love and affection and ₹25,000/- for funeral expenses.

The claimants pleaded before the Tribunal that the deceased was working as a helper on combine harvester and was earning ₹10,000/- per month. But the claimants were unable to produce any cogent evidence with regard to the occupation and monthly earning of the deceased. The Tribunal relying upon the minimum wages prevalent in the State at the time of accident assessed the monthly income of the deceased as ₹6000/- per month, ½ deduction was made for self-expenses and multiplier of 14 was applied considering the age of parents of the deceased.

Heard learned counsel for the parties, perused the paper book and relevant documents produced by learned counsel for the parties.

Learned counsel for the appellants contends that no future prospects

have been awarded and the Tribunal erred in applying the multiplier of 14 considering the age of the parents of the deceased. He further argued that no amount has been awarded for loss of estate.

Learned counsel for the insurer defended the award and submitted that no amount should have been awarded for loss of love and affection.

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

There is no dispute between the parties with regard to the monthly income of the deceased assessed by the Tribunal as ₹6000/- and ½ deduction made for self-expenses.

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, as the deceased was 19 years old at the time of accident. Claimants are also entitled to a sum of ₹15,000/- each for funeral expenses and for loss of estate.

The Tribunal erred in applying the multiplier of 14 considering the age of parents of the deceased. The issue that the multiplier has to be applied as per the age of the deceased is no longer *res-integra*. The Supreme Court in the case of Sube Singh and another vs. Shyam Singh (Dead) and others; 2018 (3) SCC 18, has held as under:

“On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age

group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants.”

A multiplier of 18 is applied as the deceased was 19 years old at the time of accident.

As the quantum of compensation is being revisited, it would be appropriate that the amounts awarded under the conventional heads are made in consonance with the decision of the Supreme Court in Pranay Sethi's case (supra) and no amount can be awarded for loss of love and affection.

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

	Head	Compensation awarded
(i)	Income	₹6000/- per month (assessed by the Tribunal)
(ii)	Future prospects at 40%	₹2400/- per month
(iii)	Total Income	₹8400/- per month
(iv)	Deduction of personal expenses	₹4200/- (i.e. 1/2 of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Total Dependency	₹4200x12x18=₹9,07,200/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹9,37,200/-

The award dated 22.09.2015 is modified to the extent that the amount awarded of ₹6,59,000/- is enhanced to ₹9,37,200/-. The claimants/appellants shall be entitled to interest @7.5 % per annum on the enhanced amount of compensation 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.

DECEMBER 06, 2018
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(AVNEESH JHINGAN)
JUDGE

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