IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2868 of 2016 (O&M)

DATE OF DECISION : 17.05.2018

United India Insurance Co. Ltd.

....APPELLANT

Versus

Smt. Krishana Rani and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Gopal Mittal, Advocate,
for the appellant.

Mr. Naveen Sharma, Advocate, for
Mr. Kamal Narula, Advocate,
for respondents No.1 to 3.

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AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 03.09.2015 passed by the Motor Accident Claims Tribunal, Fazilka (for short, `the Tribunal').

2. The insurer of the offending vehicle, i.e. Tata Sumo bearing registration No. RJ-19UA-3708, has filed the present appeal being aggrieved of the quantum of compensation awarded by the Tribunal.

3. The brief facts of the case are that on 15.08.2012, Gurdev Singh along with his daughter Nirmal Kaur was going on a motor cycle bearing registration No. PB-22F-8680. On link road near back Behak Hasta Uttar, the motor cycle was hit by the rashly and negligently offending

vehicle. As a result of the accident, Gurdev Singh died on the spot. FIR No. 141 dated 15.08.2012 was registered.

4. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act') was filed by the legal heirs of the deceased.

5. The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The income of the deceased was assessed as ₹ 10,000/- per month. 30% future prospects were added, 1/3rd deduction for self expenses was made and multiplier of 14 was applied. A sum of ₹ 17,09,000/- was awarded along with interest at the rate of 6% per annum. The amount awarded included ₹ 2,25,000/- under the conventional heads.

6. Learned counsel for the appellant argued that the deceased was 48 years of age, no proof of his occupation or income was adduced by the claimants. The Tribunal erred in assessing the monthly income of the deceased as ₹ 10,000/-, as the accident took place in the year 2012. His grievance is that 25% future prospects should be added, instead of 30%, multiplier of 13 be applied and the amount awarded under the conventional heads should be restricted to ₹ 70,000/-.

7. Learned counsel for respondents No.1 to 3 – claimants argued that the deceased was an agriculturist and doing Dairy farming, hence his earning was rightly assessed.

8. The Tribunal recorded that there was no evidence to prove occupation or earning of the deceased. In such circumstances, the safest yardstick to be followed is to rely upon the minimum wages prevalent at the time of the accident. There was an averment in the claim petition that the

deceased was an agriculturist and the said averment has not been rebutted, in such circumstances, it would not be appropriate to restrict the earning of the deceased to that of an unskilled labourer. Keeping in view the facts of the case, monthly income of the deceased is assessed as ₹ 6,000/-. This amount has been assessed having a clue from the minimum wages prevalent in the State at the time of the accident. Having due regard to decisions of the Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi and others,*** AIR 2017 (SC) 5157, and in ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (6) SCC 121, 25% future prospects are to be added, as the deceased was in the age group of 45 to 50 years. Keeping in view age of the deceased, multiplier of 13 is to be applied and the appellants are entitled to ₹ 70,000/- under the conventional heads, i.e. ₹ 15,000/- each for loss of estate and funeral expenses, and ₹ 40,000/- for loss of consortium.

9. For the reasons mentioned above, the compensation is calculated as under :-

Monthly Income	₹ 6,000/-
Add 25% future prospects	₹ 1,500/-
Total	₹ 7,500/-
1/3rd deduction for self expenses	₹ 2,500/-
Dependency	₹ 5,000/-
Applying multiplier of 13	
(5000 x 12 x 13)	₹ 7,80,000/-
Funeral expenses	₹ 15,000/-
Loss of estate	₹ 15,000/-
Loss of consortium	₹ 40,000/-
Total	₹ 8,50,000/-

10. The award dated 03.09.2015 is modified to the extent that the amount of ₹ 17,09,000/- awarded by the Tribunal is reduced to ₹ 8,50,000/-.

11. The appeal is partly allowed in the aforesaid terms.

May 17, 2018 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No