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

****

FAO No.5013 of 2015
Date of Decision: 01.11.2018

Reliance General Insurance Company Limited
Appellant

Versus

Kamla Devi and others
Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Subhash Goyal, Advocate
for the appellant.

Mr. Bimal Maini, Advocate
for respondents No.1 and 2.

None for respondent No.3 and 4.

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AVNEESH JHINGAN, J (Oral):

The Insurer of the Truck bearing registration No. HR-38G-6200 (hereinafter referred to as 'offending vehicle') is in appeal against the award dated 27.03.2015 passed by the Motor Accident Claims Tribunal, Chandigarh (for brevity 'the Tribunal').

2. The brief facts of the case are that on 14.03.2013, Deepak Bhatt (deceased) alongwith his friend Rajeev Kohli (pillion rider) was going towards Railway Station, Chandigarh on motorcycle bearing registration No. CH-01AJ-2761. When they crossed Railway Bridge and reached near the light point, the motorcycle was hit by a rashly and negligently driven offending vehicle. The deceased

suffered multiple injuries, he was taken to Government Medical College & Hospital, Sector 32, Chandigarh, where he was declared brought dead. The parents of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

3. The Tribunal, after considering the facts and appreciating the evidence adduced, awarded a sum of ₹21,85,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹25,000/- for funeral and last rites. The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The Tribunal ordered that the insurer of the offending vehicle shall pay the compensation and would have right to recover the same from the driver of the offending vehicle.

4. I have heard learned counsel for the parties and perused the record.

5. None has put in appearance on behalf of Driver and Owner of the offending vehicle inspite of service.

6. Learned counsel for the appellant contended that the income of the deceased i.e. ₹10,000/- per month assessed by the Tribunal is on the higher side. The Tribunal erred in awarding recovery rights qua Driver of the offending vehicle only. He further challenged that 1/3rd deduction towards self expenses has wrongly been made. He argued that Tribunal has granted 50% future prospects instead of 40%.

7. Learned counsel for respondents No.1 and 2 (claimants) argued that the deceased was working as Area Supervisor with

Prince Facility Management Services, New Delhi and was earning ₹15,000/- per month. He further argued that his Identity Card with designation as a Supervisor was exhibited as P2/E. He further contended that during the pendency of the litigation, father of the deceased also expired. He also contended that amount awarded against conventional heads is on the lower side.

8. The contention raised by learned counsel for the appellant regarding erroneously granting recovery rights qua Driver deserves acceptance. The tortfeasor is not only the driver. The owner of the offending vehicle is equally liable to pay compensation. The Supreme Court in case of ***Machindranath Kernath Kasar v. D.S.Mylarappa [AIR 2008 SC 2545]*** held as under:-

> *"17. When a damage is caused upon act of negligence on the part of a person, the said person is primarily held to be liable for payment of damages. The owner of the vehicle would be liable as he has permitted the use thereof. To that effect only under the Motor Vehicles Act, both driver and owner would be jointly liable."*

9. Further, as per decision of the Supreme Court in the case of ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** ½ deduction towards self expenses is to be made as the deceased was unmarried.

10. The contention of learned counsel for the appellant with regard to grant of future prospects, also deserves acceptance. In view of decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157*** and in ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** 40% future prospects are to be awarded instead of

50%.

11. In the present appeal, no interference is called for in the monthly income assessed by the Tribunal. Deceased was 22 years old, he was working as Supervisor in a private concern. It would not be appropriate to equate such a person with an unskilled labourer. No amount of compensation can compensate the loss suffered by the parents due to death of their young son. In any case, this itself cannot be a criteria to award compensation but the Courts are duty bound to award just and equitable compensation to the claimants.

12. The income assessed by the Tribunal cannot be stated to be exorbitant. Since the quantum of compensation is being revisited, the claimants are awarded a sum of ₹15,000/- each for funeral expenses and loss of estate.

13. In view of above discussion, the compensation is re-calculated as under:-

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	10,000/-
Future Prospects *[@ 40% of the monthly income assessed]*	4,000/-
Sub Total	14,000/-
1/2 deduction for self expenses	7,000/-
Monthly Dependancy	7,000/-
Annual Dependancy (7,000 x 12)	84,000/-
Applying multiplier of 18	**15,12,000/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**15,42,000/-**

14. The award dated 27.03.2015 is modified to the extent that the amount awarded by the Tribunal of ₹21,85,000/- is reduced

to ₹15,42,000/-.

15. At the time of admission of appeal, payment of compensation beyond ₹15,00,000/- was stayed. The claimants shall be entitled to balance amount of ₹42,000/- @ 7.5% per annum from the date of filing of the claim petition till the date of realization of the amount.

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

[AVNEESH JHINGAN]
JUDGE

November 01, 2018

pankaj baweja

1. Whether speaking/ reasoned	:	Yes/ No
2. Whether reportable	:	Yes/ No