IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No: 5250 of 2015 (O&M)
DECIDED ON: NOVEMBER 30, 2018

UNITED INDIA INSURANCE CO. LTD.

.....APPELLANT

VERSUS

NEETU DEVI & OTHERS

.....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ram Avtar, Advocate
for the appellant.

Mr. Surender Deswal, Advocate
for respondents No1, 5 and 6.

Ms. Manpreet Ghuman, Advocate
for respondents No.2 to 4.

Mr. Dharam Pal Balda, Advocate for
Mr. Madan Pal, Advocate
for respondent No.7.

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AVNEESH JHINGAN, J (ORAL)

The present appeal has been filed by the insurer of motorcycle bearing registration No. HR-05Z-9271 (hereinafter referred to as 'offending vehicle') against the award dated 06.05.2015 passed by Motor Accident Claims Tribunal, Karnal (for brevity 'the Tribunal').

2. The claimants have been arrayed as respondents No.1 to 6 and

owner of offending vehicle has been arrayed as respondent No.7 in the appeal.

2. The facts as emanating from the record are that on 19.10.2012 Amarjeet Singh @ Soni (deceased) alongwith Sirajudin was coming back from Indri to his residence on motorcycle bearing registration No. HR-75-8700. When he reached near village Butan Kheri, the offending vehicle came from the opposite side and hit the motorcycle of the deceased. As a result of the impact, Amarjeet Singh @ Soni received multiple serious injuries, he was shifted to General Hospital, Karnal where he succumbed to the injuries. FIR No. 454, dated 20.10.2012, under Sections 279 and 304-A of the Indian Penal Code 1860, was registered at Police Station Indri, Karnal.

3. A claim petition under Section 163-A of the Motor Vehicles Act 1988 was filed by the legal heirs of the deceased before the Tribunal.

4. The Tribunal after considering the facts and appreciating the evidence adduced, awarded a compensation to the tune ₹13,08,000/- alongwith interest @ 12% per annum. The amount awarded included ₹2000/- for funeral expenses, ₹5000/- for loss of consortium and ₹5,00,000/- for loss of love and affection.

5. The Tribunal assessed the monthly income of the deceased as ₹3300/- per month. 50% future prospects were awarded. $1/4^{th}$ deduction for self expenses was made and multiplier of 18 was applied.

6. Heard learned counsel for the parties.

7. Learned counsel for the appellants contended that the Tribunal erred in not calculating the compensation as per II^{nd} Schedule to the Act. The grievance raised is that no amount should have been awarded for loss of love and affection. He further contended that deduction needs to be $1/3^{rd}$ instead of

1/4th.

8. Learned counsel for respondents No.2 to 4 contended that the deceased was survived by three minor children. Hence, the amount awarded by the Tribunal is just and equitable.

9. The contention raised by learned counsel for the appellant deserves acceptance.

10. There is no dispute between the parties with regard to the monthly income of the deceased assessed by the Tribunal as ₹ 3300/-. The exact age of the deceased is not forthcoming from the record. It was pleaded before the Tribunal that the deceased was 26 years old at the time of accident. But in the postmortem report the age of the deceased was mentioned as 22 years. The age mentioned in the postmortem report is only an estimation. In such circumstances, the deceased would be considered in the age group of 25-30, hence, multiplier of 18 is to be applied.

11. A special alternative provision for compensation has been given under Section 163-A of the Act. As per the said provision, claimants are not required to prove the rash and negligent driving of the offending vehicle. Moreover, it is meant for that strata of Society where the annual earning of the deceased is less than ₹ 40,000/-. But the restriction is that the compensation is to be awarded as per IInd Schedule to the Act only.

12. No future prospects can be awarded under Section 163-A of the Act and 1/3rd deduction is to be made for self expenses.

13. Keeping in view the IInd Schedule of the Act, the compensation is recalculated as under:

	Head	**Compensation awarded**
(i)	Income	₹39,600/- annual income
(ii)	Deduction of personal expenses	₹13,200/- (i.e. 1/3rd of total income)
(iii)	Multiplier	18 (as per age of deceased)
(iv)	Total Dependency	₹ 26,400x18=₹ 4,75,200/-
(v)	Funeral expenses	₹2,000/-
(vii)	Loss of consortium	₹5000/-
(viii)	Loss of estate	₹ 2500/-
	Total Compensation awarded	₹4,84,700/-

14. The award dated 06.05.2015 is modified to the extent that the amount awarded of ₹13,08,000/- is reduced to ₹4,84,700/-. It is pertinent to mention here that vide order dated 14.08.2015 there was a stay to disperse the compensation beyond ₹4,78,800/- The claimants shall be entitled to the remaining amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of amount.

15. Appeal is disposed of, accordingly.

(AVNEESH JHINGAN)
JUDGE

NOVEMBER 30, 2018
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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No