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

**FAO No.4296 of 2016 (O&M)
Date of Decision: 06.12.2018**

Sunita Devi and others

Appellants

Versus

Krishan Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. R.K. Bashamboo, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 26.11.2015 passed by the Motor Accident Claims Tribunal, Gurgaon [for brevity 'the Tribunal'] has been assailed by legal heirs of Umed Singh for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The appellants are widow, unmarried daughter and minor son of Umed Singh. The owner of motorcycle bearing registration No. HR-36D-8553 [hereinafter referred to 'offending vehicle'], driver and insurer of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 07.07.2014, Umed Singh was coming to village Mirzapur from Hellimandi on foot. When he reached near Mirzapur School, he was struck by a rashly and negligently driven offending vehicle. As a result of the impact, he sustained serious injuries. He was taken to Chiranjivee Hospital, Hellimandi from where he was taken to Rockland Hospital, Manesar. Thereafter, he was referred to Batra Hospital, Delhi where he succumbed to the injuries on 10.07.2014. FIR was registered on 08.07.2014.

A claim petition under Section 166 of the Act was filed. The Tribunal, after considering the facts and appreciating the evidence adduced, held that 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 sum of ₹6,58,439/- alongwith interest @ 9% per annum. The said amount included ₹25,000/- for funeral expenses and ₹56,551/- for medical expenses.

The claimants, in the claim petition, pleaded that the deceased was working as Mason and he was also supplying milk to Sweet Makers hence was earning ₹25,000/- per month. Bhim Singh, Sarpanch deposed as PW6 and stated that the deceased owned four Buffaloes. But the claimants failed to substantiate his occupation and monthly earning. Thus, the Tribunal relying upon the minimum wages prevalent in the State at the time of accident, assessed income of the deceased as ₹5,547/- per month, made 1/3rd deduction

for self expenses and multiplier of '13' was applied.

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

Learned counsel for the appellants contends that the Tribunal has not awarded future prospects, compensation towards loss of estate as well as loss of consortium.

Learned counsel for the Insurer defends the award and resisted any further enhancement.

There is no dispute with regard to monthly income of the deceased, deduction made for self expenses and multiplier applied.

The contention raised by learned counsel for the appellants deserves acceptance. Having due regard to the decisions of the Supreme Court in case of **National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157** and **Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,** future prospects are to be awarded. In the present case, there is dispute as to the age of the deceased that whether he was 55 years old or 50 years. As the widow herself deposed that the deceased was 55 years old, it would be appropriate to consider the deceased to be above 50 years and hence, claimants would be entitled to 10% future prospects. The appellants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to the widow for loss of consortium.

As there is no dispute with regard to loss of dependency calculated by the Tribunal i.e. ₹5,76,888/-, 10% of the said amount is

awarded for future prospects i.e. ₹57,689/-. The amounts under the conventional heads are enhanced from ₹25,000/- to ₹70,000/-. The net result is that amount of ₹6,58,439/- awarded by the Tribunal is enhanced by ₹1,02,689/-.

The appellants are entitled to enhanced amount alongwith interest as held by the Tribunal from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the manner indicated above.

[AVNEESH JHINGAN]
JUDGE

December 06th, 2018
pankaj baweja

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