

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

FAO No.4326 of 2016 (O&M)

Date of decision: 11.05.2018

Harbans Kaur

.... Appellant

Versus

Partap Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.B.S.Jaswal, Advocate
for the appellant.

Ms. Vandana Malhotra, Advocate
for respondent No.2-Insurance Company.

Avneesh Jhingan, J.

The present appeal has been filed against award dated 02.09.2015 passed by Motor Accidents Claims Tribunal, Amritsar (hereinafter referred to as 'the Tribunal').

On 21.02.2015 at about 1.30 p.m., Amrik Singh was going on a motorcycle bearing registration No.PB-BJ-6344. On reaching near the Bridge Drain, towards Khera Bala Chak side Sarhala, District Amritsar, motorcycle was struck by a rashly and negligently driven Alto car K-10 bearing registration No.PB-10-EW-Temp-3525 (for short, 'the offending vehicle'). Amrik Singh succumbed to injuries sustained in the accident.

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

The Tribunal held that accident occurred due to rash and negligent driving of the offending vehicle. 1/4th deduction for self expenses was made by the Tribunal and multiplier of 9 was applied. The Tribunal awarded a sum of Rs.3,82,000/- along with interest @ 6% per annum. The amount awarded included Rs.17,500/- under the conventional heads.

The present appeal has been filed for enhancement of compensation.

I have learned counsel for the parties, perused the paper book and the relevant documents produced by them.

Learned counsel for the appellant contended that deceased owned agricultural land and a tractor also, in such circumstances, the Tribunal erred in assessing the monthly earning of deceased as Rs.4500/- which is even less than the minimum wages prevalent at the time of the accident. His grievance is that the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the Insurance Company contended that deceased was 60 years of age. The agricultural land remains there even after his death. She defended the award and resisted any enhancement.

In the present appeal, the parties have not disputed the age of the deceased, multiplier applied and the deduction made for self expenses.

The contention raised by learned counsel for the appellant that monthly income assessed by the Tribunal of the deceased was on the lower side deserves acceptance. Though the claimants failed to prove the earning of the deceased, yet there was no rebuttal to the pleadings that he was an

agriculturist. In such circumstances, it would not be appropriate to restrict his monthly earning to that of an unskilled labourer. Even an unskilled labourer, at the time of the accident in the State of Punjab, was having minimum wages as Rs.6660/- per month. Accordingly, in the facts and circumstances of the case, the monthly income of the deceased is taken as Rs.7400/-.

Having due regard to the decision of the Supreme Court in *National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157*, the claimants would be entitled to Rs.70,000/- under conventional heads i.e Rs.15,000/-for funeral expenses, Rs.15,000/- for loss of estate and Rs.40,000/- loss of consortium.

The compensation is recalculated as under :-

Monthly income	Rs.7400/-
1/4th deduction for self expenses	Rs.1850/-
Dependency	Rs.5550/-
Applying multiplier of 9	Rs.5,99,400/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Total	Rs.6,69,400/-

The award dated 02.09.2015 is modified to the extent that the amount awarded by the Tribunal of Rs.3,82,000/-is enhanced to Rs.6,69,400/-.

The claimants would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

11.05.2018

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1. Whether the order is speaking/reasoned: Yes/No

2. Whether the order is reportable : Yes/No