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

FAO No.5997 of 2015 (O&M)
Date of Decision : 03.12.2018

Neha Devi and others

Appellants

Versus

Jagpal Singh and others

Respondents

FAO No.6812 of 2015 (O&M)

Jaynab Banu Begam and others

Appellants

Versus

Jagpal Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Anil Kumar Gahlawat, Advocate
for the appellants.

Mr. S.K. Rana, Advocate
for respondent No.1.

Mr. Vishal Kashyap, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

This order shall dispose of two appeals. The facts involved are similar, hence these are being disposed of by a common order. The award dated 08.05.2015 passed by the Motor Accident Claims Tribunal, Karnal [for brevity 'the Tribunal'] has been assailed by the legal heirs of Gautam Verma and

Mainul Haque Sk seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The facts are that on 01.02.2013, Gautam Verma and Mainul Haque Sk were travelling in a car. When they reached near Shani Mandir, on National Highway No.1, the car was struck by a rashly and negligently driven Bus bearing registration No.HR-66A-0577. As a result of the impact, both the occupants sustained multiple injuries and died at the spot. FIR No. 75, dated 01.02.2013 was registered at Police Station Gharaunda.

Claim petitions under Section 166 of the Act were filed. One by wife, two minor children and mother of Gautam Verma (numbered as MACT No.258 of 2013) and other by widow, two minor children and parents of Mainul Haque Sk (numbered as MACT No. 215 of 2013). The Tribunal after considering the facts and appreciating the evidence on record, held that accident occurred due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. In both the claim petitions, sum of ₹10,39,000/- each alongwith interest @ 7.5% per annum was awarded.

The claimants pleaded that Gautam Verma was 35 years old and was gold smith and was earning ₹15,000/- per month whereas Mainul Haque was 32 years old and he was working as

Gold & Diamond Smith and his earning was ₹50,000/- per month. However, the claimants were not able to substantiate their claim that they were working as gold smith and no evidence was adduced with regard to the monthly earning of the deceased.

The Tribunal assessed monthly income of both the deceased as ₹4,000/- taking them to be un-skilled workers. 50% future prospects were awarded; multiplier of '16' was applied and 1/4th deduction for self expenses was made. An amount of ₹25,000/- was awarded for funeral expenses, ₹50,000/- for loss of love and affection and ₹1,00,000/- was awarded as loss of consortium to the widow in both the claim petitions.

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

Learned counsel for the appellants contended that the Tribunal erred in assessing ₹4,000/- as monthly income of the deceased, which is even less than the minimum wages for an un-skilled labourer. He argued that deceased were working as a Gold Smith and should be treated as a skilled labourer. He further argued that no amount has been awarded for loss of estate.

Learned counsel for the respondents argued that claimants failed to substantiate the occupation and monthly earning of the deceased, in such circumstances, the Tribunal rightly treated them as unskilled labourer. It was further argued that 50% future prospects awarded are on the higher side and no amount can

be awarded for loss of love and affection.

Learned counsel for the appellants could not raise any dispute to the fact that there was nothing produced on record to prove the occupation and monthly earning of the deceased. His grievance that monthly earning of the deceased assessed as ₹4,000/- is on the lower side, deserves acceptance. In absence of any evidence, the safest yardstick is to take minimum wages prevalent in the State, at the time of accident as monthly earning of the deceased. Minimum wages at the time of accident in the State of Haryana were ₹5,341/-. The same are rounded off to ₹5,350/- and loss of dependency is being calculated accordingly.

There is no dispute with regard to multiplier applied of '16' and 1/4th deduction made for self expenses.

As quantum of compensation is being revisited, it would be appropriate that future prospects are awarded in consonance with the decisions of the Supreme Court in **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**. The deceased were 35 and 32 years old respectively and were self-employed, hence, 40% future prospects are awarded. The claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to widow for loss of consortium in both the appeals. No amount is being awarded for loss of love and affection.

In view of above discussion, in both the appeals compensation is re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased assessed	5,350/-
40% Future Prospects	2,140/-
Sub Total	7,490/-
1/4 th deduction for self expenses	1,873/-
Monthly Dependency	5,617/-
Annual Dependency	67,404/-
Applying multiplier of 16	10,78,464/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of consortium to widow	40,000/-
Grand Total	11,48,464/-

The award dated 08.05.2015 passed in MACT Case Nos.258/2013 and 215/2013 is modified to the extent that amounts of ₹10,39,000/- awarded by the Tribunal are enhanced to ₹11,48,464/- in both the appeals. The amounts awarded for loss of consortium to widows shall be disbursed to them and the balance compensation shall be disbursed to the claimants in the same proportion as held by the Tribunal.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeals are partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

December 03, 2018
pankaj baweja

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