

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5212 of 2016 (O&M)

Date of Decision: 05.12.2018

Bimla Devi and others

.....Appellants

Versus

Furkan and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Diwan S. Adlakha, Advocate
for the appellants.

Mr. Radhey Shyam Sharma, Advocate
for respondent No.4-Insurance Company.

AVNEESH JHINGAN, J.(oral)

The award dated 30.03.2016 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'the Tribunal') has been assailed by the legal heirs of Naveen Tyagi for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The appellants are the parents and major brother of the deceased. The driver of tractor trolley bearing registration No.UP-15BK-0305 (hereinafter referred to as 'offending vehicle'), two owners and insurer (i.e. The Oriental Insurance Company Limited) of the offending vehicle have been arrayed as respondents No. 1 to 4 respectively in the appeal. The grand-parents of the deceased have been arrayed as performa respondents No. 5 and 6.

The brief facts of the case are that a motor vehicular accident took place on 14.02.2014. Naveen Tyagi alongwith Sanjeev Kumar was going on a motor cycle bearing registration No. HR-02F-6394 from village

Hariya Bass to Yamuna Nagar. The motor cycle was being driven by Naveen Tyagi. On their way near Bus stand Karehra Khurd, the motor cycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Naveen Tyagi fell down on the kacha portion of the road and sustained multiple injuries. He was taken to General Hospital, Yamuna Nagar where he was declared dead. FIR No.24 dated 14.02.2014 was registered at Police Station Sadar Yamuna Nagar.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, registered owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

The Tribunal assessed the monthly earning of the deceased as ₹12,000/-; ½ deduction for self expenses was made and multiplier of 14 was applied considering the age of the mother of the deceased. The Tribunal awarded a sum of ₹10,33,000/- as compensation along with interest at the rate of 7% per annum. The amount awarded included ₹15000/- for loss of love and affection and ₹10,000/- for funeral expenses.

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

Learned counsel for the appellants argued that the Tribunal erred in applying the multiplier of 14 considering the age of the mother of the deceased. The grievance raised is that no future prospects have been awarded and the amount awarded under the conventional heads is on lower side.

Learned counsel for the insurer contended that the income assessed by the Tribunal is on the higher side and no amount can be awarded for loss of love and affection.

The contentions raised by learned counsel for the appellant deserve acceptance.

In the claim petition the claimants pleaded that the deceased was a student of B.Tech (Computer Science) and he was earning ₹20,000/- per month. He was unmarried and aged 24 years at the time of accident. The Tribunal after considering the age, qualification and other factors, assessed monthly earning of deceased as ₹12,000/-. In such circumstance, no interference is called for in the monthly income assessed by the Tribunal.

The Tribunal erred in applying the multiplier considering the age of the mother of the deceased. This issue is no longer res-integra. The Supreme Court in the case of **Sube Singh and another vs. Shyam Singh (Dead) and others; 2018 (3) SCC 18** has held as under:

“On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna Lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants.”

The deceased was 24 years of age and as per the decision of the

Supreme Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21*, multiplier of 18 is to be applied considering the age of the deceased.

In consonance with the decision of the Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157* and *Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480.*, 40% future prospects are awarded.

It is pertinent to mention that no dispute has been raised regarding deduction made for self expenses.

The appellants are entitled to ₹15000/- each for funeral expenses and loss of estate. As the quantum of compensation is being revisited, no amount can be awarded for loss of love and affection.

The compensation is recalculated as under:-

Sr. No.	Particulars	Amount Awarded
1.	Monthly income	₹12,000/-
2.	40% future prospects (12000x40%) (12,000+4800=16,800)	₹4800/-
4.	½ deduction	₹8400/-
3.	Multiplier of 18 (8400x12x18)	₹18,14,400/-
4.	Conventional heads (loss of estate and funeral expenses Rs.15,000/- each)	₹30,000/-
	Total	₹18,44,400/-

The award dated 30.03.2016 is modified to the extent that amount awarded of ₹10,33,000/- by the Tribunal is enhanced to ₹18,44,400/-.

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 appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

05.12.2018
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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No