

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No.7911 of 2014 (O&M)

Date of Decision: 17.05.2018

Smt. Daya Devi and others

.....Appellants

Versus

Rajeev Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. M.S. Randhawa, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.(oral)

The present appeal has been filed by legal heirs of deceased Sunil Kumar against the award dated 30.04.2014 passed by the Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal') for enhancement of compensation.

On 09.03.2013 Sunil Kumar and Ranjeet were going from Kotputli on their motor cycle Hero Honda bearing registration No.HR-35-F-9945 and when they reached near 'Hotel Jo Hi Budi' towards Behror, the motor cycle was hit by a rashly and negligently driven Bolero Jeep bearing registration No.RJ-18-UA-1595 (for short 'the offending vehicle'). As a result of the accident, Sunil Kumar, aged 28 years, suffered grievous injuries and was taken to Government B.D.M. Hospital, Kotputli and thereafter he was referred to SMS Hospital, Jaipur. On his way to hospital, he succumbed to his injuries. FIR under Section 279/304-A IPC was registered.

In a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The age of the deceased was proved as 28 years, 1/4th deduction for self expenses was made and multiplier of 17 was applied. The Tribunal awarded a sum of Rs. 7,69,500/- along with interest at the rate of 9% per annum.

I have heard learned counsel for the parties, perused the paper book and relevant record.

Learned counsel for the appellants argued that the Tribunal erred in assessing the monthly earning as Rs.4800/-, which is less than the minimum wages prevalent at the relevant time. He further contended that no future prospects had been added and the amount of Rs.35,000/- awarded under conventional heads is on lower side.

Learned counsel for the Insurance Company argued that the claimants were not able to substantiate the earning of the deceased and hence, no case is made for enhancement.

In case, where the monthly earning of the deceased is not proved, one of the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. In March 2013, the minimum wages for unskilled labourer in the State of Haryana was Rs.5212/- per month. The compensation would be calculated taking his monthly earning as Rs.5200/-.

Having due regard to the decision of Supreme Court in **National Insurance Company Limited Versus Pranay Sethi and others**, 2017 AIR (SC) 5157, 40% future prospects are to be added and the appellants are also entitled to Rs.70,000/- under conventional heads i.e. Rs.

Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses.

The compensation is re-calculated as under:-

Monthly salary	Rs.5200/-
40% future prospects	Rs. 2080/- Rs.7280/-
¼ deduction for self expenses	Rs. 1820/- Rs.5460/-
multiplier of 17	Rs. 5460x17x12 Rs.11,13,840/-
Conventional heads	Rs.70,000/-
Total	Rs.11,83,840/-

The award dated 30.04.2014 is modified to the extent that the amount awarded of Rs.7,69,500/- is enhanced to Rs.11,83,840/-.

The claimants would be entitled to enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

17.05.2018
reema

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