

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

FAO No. 7021 of 2016

DECIDED ON: DECEMBER 15, 2018

RATTAN SINGH AND ANOTHER

.....APPELLANTS

VERSUS

KAWALJEET & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Rupender Singh, Advocate for
Mr. Anil Kumar Sharma, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for respondent No.3.

Mr. Punit Jain, Advocate
for respondent No.6.

AVNEESH JHINGAN, J (ORAL)

The award dated 29.10.2014 passed by the Motor Accident Claims Tribunal, Rewari (for short 'the Tribunal') has been assailed by the parents of Anil seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The driver of the bus bearing registration No. RJ-19-PA-5497 (hereinafter referred to as 'offending vehicle'), owner and insurer, i.e. New India

Assurance Company Ltd. of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal. The owner of canter bearing registration No. PB-32-L-1547 (hereinafter referred to as 'Canter'), driver and insurer of canter i.e. Choramandlam MS General Insurance co. Ltd. have been arrayed as respondents No.4 to 6 respectively in the appeal.

The facts necessary for the adjudication of the present appeal are that a motor vehicular accident took place on 29.02.2012 involving a canter and the offending vehicle. The offending vehicle was being driven in a rash and negligent manner. It hit the canter, as a result of the impact the canter turned turtle and Anil sustained injuries on his head and died at the spot. FIR No. 81, dated 29.02.2012 was registered at Police Station Kundli.

The legal heirs of Anil (deceased) filed a claim petition under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence held that the accident was caused due to the 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. The Tribunal awarded a compensation to the tune of ₹6,44,000/- alongwith interest @7% per annum. The amount awarded included ₹25,000/- each for loss of love and affection and for funeral expenses.

The claimants in the claim petition pleaded that the deceased was 20 years old at the time of accident and used to do labour work and also run milk diary, it was pleaded that he was earning ₹20,000/- per month. But the claim was not substantiated. The Tribunal assessed the income of the deceased as ₹5500/- per month, 1/2 deduction for self-expenses was made and multiplier of

18 was applied.

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

Learned counsel for the appellants contends that no future prospects have been awarded and no amount is awarded for loss of estate.

Learned counsel for the insurer defends the award and contends that the amount of monthly income assessed by the Tribunal includes future prospects. Further, contends that the amount awarded under the conventional heads are on the higher side, as no amount can be awarded for loss of love and affection.

The contention raised by learned counsel for the appellants deserves acceptance.

The deceased was 20 years old at the time of accident and having due regard to the decisions of the Supreme Court in National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009 and Hem Raj vs. Oriental Insurance Company Ltd; 2018 (2) PLR 480; 40% future prospects are awarded.

The contention of learned counsel for the insurer that the monthly income assessed by the Tribunal includes future prospects, lacks merit.

It is evident that only monthly income of the deceased was assessed. There is nothing in the award to suggest that the Tribunal while assessing the monthly income, had considered future prospects.

As the quantum of compensation is being revisited the amount under the conventional heads are to be made in consonance with Parnay Sethi's case

(supra). Claimants are entitled to a sum of ₹15,000/- each for funeral expenses and for loss of estate. No amount can be awarded for loss of love and affection.

There is no dispute between the parties with regard to the loss of dependency calculated by the Tribunal as ₹5,94,000/-; 40% of the said amount is awarded as future prospects i.e. ₹2,37,600/-. The amount awarded under the conventional heads is reduced by ₹20,000/-.

In view of above discussion, the award dated 29.10.2014 is modified to the extent that the amount awarded of ₹6,44,000/- is enhanced by ₹2,17,600/-. The appellants shall be entitled to interest @7.5 % per annum on the enhanced amount of compensation from the date of filing of the claim petition till the realization of the amount.

The appeal is partly allowed in the afore-said terms.

DECEMBER 15, 2018
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No