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

**FAO No.975 of 2016 (O&M)**
**Date of decision: 28.11.2018**

**Smt.Rehmati ...Appellant**

**Versus**

**Rukmuddin and Others ...Respondents**

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Chetan Kapoor, Advocate
for Mr. Ashish Gupta, Advocate
for the appellant.

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

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**AVNEESH JHINGAN, J. (ORAL)**

The unfortunate mother who lost her young daughter of 17 years in a Motor Vehicular Accident is in appeal against award dated 15.04.2015, passed by Motor Accident Claims Tribunal, Mewat (for short, 'the Tribunal') seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The driver of vehicle bearing registration No. RJ-02GA-3250 (hereinafter referred as 'offending vehicle'), Owner and insurer of the offending vehicle i.e. New India Assurance Company Ltd. has been arrayed as respondents No. 1 to 3 respectively. Father of the deceased has been arrayed as performa respondent in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 21.08.2012 Aashiq and Shakunt (deceased) were going on a motorcycle bearing registration No. HR-52-A-0279. They were going from their village to Nuh. Shakunt was the pillion rider. When they reached near village Malab, their motorcycle was struck by a rashly and negligently driven offending vehicle. As a result of the impact, both the occupants of the motorcycle fell down and sustained injuries. They were taken to community Health Centre, Nuh, from where, they were referred to Safdarjung Hospital, New Delhi. Thereafter, Shakunt was shifted to Deen Dayal Upadhyaya hospital, Delhi on 25.08.2012 where she succumbed to injuries sustained in the accident. FIR was registered.

A claim petition under Section 166 of Motor Vehicle Act, 1988 (for short 'the Act') was filed by the parents of the deceased. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to the rash and negligent driving of the offending vehicle. The insurer of the offending vehicle was held liable to pay the compensation. The Tribunal awarded a sum of ₹ 3,77,500/- along with interest @ 9% per annum. The amount awarded included ₹ 87,500/- for medical expenses and ₹ 20,000/- on account of loss of love and affection and expenses for the last rites.

The deceased was 17 years of age at the time of accident. The Tribunal assessed her notional income as ₹ 15,000/- per annum. Multiplier of 18 was applied.

Heard. Learned counsel for the parties, perused the paper-book and relevant documents.

Learned counsel for the appellant contended that the Tribunal erred in assessing the notional income of the deceased as ₹15,000/- per annum. Her mother deposed that she (deceased) was a labourer and was a working hand in the family. He further contended that the amount awarded under the conventional heads are on the lower side.

Learned counsel for the insurer defended the award and contended that the claimants have failed to produce any cogent evidence regarding the occupation and earning of the deceased. He argued that deduction for self expenses has to be made while awarding the compensation.

The contention raised by learned counsel for the appellant deserves acceptance. The mother of the deceased stepped into witness box and stated that her daughter was a labourer and was earning ₹ 6,000/- per month. Alebit no cogent evidence regarding income of the deceased was produced. From the facts of the case, it is evident that the deceased belongs to that strata of the society where every hand of the family makes contribution to make the two ends meet. It would not be appropriate to consider that a 17 years old was not an earning hand for the family. In these circumstances, it would not be appropriate to rely upon the notional income as mentioned in Schedule II to the Act for awarding the compensation.

As the deceased was 17 years of age, minimum wages for unskilled labourer cannot be applied. But, it can be used as yardstick to make an assessment of her earning capacity. Considering that the minimum wages for an unskilled labourer in the State of Haryana at the time of accident was ₹ 4967/-, the monthly earning of the deceased is assessed as ₹ 5,000/-. She was 17 years old at the time of accident and had entire life before her. She would not only become the earning hand but had many other roles in her future life.

Having due regard to the decision of the Supreme Court in **National Insurance Company 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. Claimants are entitled to ₹ 15,000/- each for funeral expenses and loss of estate. In consonance with the decision of the Hon'ble Supreme Court in **Sarla Verma and Others Versus Delhi Transport Corp. and Anr: 2009 6 SCC 121**, as the deceased was unmarried ½ deduction for self expenses is made and multiplier of 18 is applied.

In view of the above discussion, the compensation is recalculated as under:-

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|---|---|
| Monthly Income | ₹ 5,000/- |
| 40% furture prospects | ₹2,000/- |
| ½ deduction for self expenses | ₹ 3500/- |
| Applying multiplier of 18 | ₹ 7,56,000/- |
| Funeral Expenses | ₹15,000/- |
| Loss of estate | ₹ 15,000/- |
| Medical expenses as awarded by Tribunal | ₹ 87,500/- |
| Total | ₹ 8,73,500/- |

The award dated 15.04.2015 is modified to the extent that the amount of ₹ 3,77,500/-awarded by the Tribunal is enhanced to ₹ 8,73,500/-. The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of amount.

The appeal is disposed of in the aforesaid terms.

**(AVNEESH JHINGAN)**
**JUDGE**

**November 28, 2018**
Poonam (II)

*Whether speaking/reasoned:* *Yes/No*

*Whether reportable:* *Yes/No*