

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

1. FAO No.2577 of 2017

Royal Sundaram Alliance Insurance Company Limited ... Appellant

Vs.

Ansuia and others

... Respondents

2. **FAO No.412 of 2018**

Ansuia and others

... Appellants

Vs.

Jeet Singh and others

... Respondents

Date of Decision:13.12.2018

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. D.K. Prajapati, Advocate
for Mr. R.S. Madan, Advocate
for the appellant-Insurance company in
FAO No.2577-2017 and
for respondent No.3 in FAO No.412 of 2018.

Mr. Anshumaan Dalal, Advocate
for respondents No.1 to 5 in FAO No.2577-2017 and
for appellants in FAO No.412-2018.

AVNEESH JHINGAN J. (Oral)

The award dated 14.02.2017 passed by the Motor Accident Claims Tribunal, Rohtak (for short “Tribunal”) has been assailed by the insurer of vehicle bearing registration No. HR-15-B-8216 (hereinafter referred to as the “offending vehicle”) and by the legal heirs of Monu. The grievance in both the appeals is regarding quantum of compensation awarded by the Tribunal under Section 166 of Motor Vehicles Act, 1988

(for short “the Act”).

As both the appeals arise from the same award and same accident, these are being decided by a common order.

The brief facts necessary for adjudication of the present appeal are that on 12.01.2016, Monu along with Ravinder was going to village Bond Kalan on a motor cycle bearing registration No.HR-11G-0793 which was being driven by Ravinder. When they reached near village Mokhra, the motor cycle was hit by a rashly and negligently driven offending vehicle. Due to the impact, Monu sustained grievous injuries and lost his life. FIR No.22 dated 13.01.2016 was registered at Police Station Meham, Rohtak.

A claim petition under Section 166 of the Act was filed by the widow, minor son, parents and grand father of the deceased. The Tribunal after considering the facts and appreciating the evidence adduced 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 to the claimants. The Tribunal awarded a sum of ₹ 23,69,000/- along with interest @ 9 % per annum. The amount awarded included ₹4,25,000/- under conventional heads including ₹ 3,00,000/- for loss of love and affection.

In the claim petition, it was pleaded that the deceased was working as a Barber and was earning ₹30,000/- per month. But, the claimants failed to adduce any cogent evidence with regard to earning of the deceased. However, PW-3 Ishwar deposed that the deceased was working as a Barber and having a Barber shop in the name of New Star Hair Dresser.

The Tribunal relying upon the DC rates, assessed the monthly income of the

deceased as ₹ 9,000/-. The Tribunal awarded 50% future prospects, made $\frac{1}{4}$ th deduction for self-expenses and applied multiplier of 16.

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

Learned counsel for the insurer contends that the Tribunal erred in assessing the monthly income of the deceased by relying upon DC rates rather than the minimum wages prevalent in the State. He argued that the Tribunal wrongly awarded 50% future prospects instead of 40%. His grievance is that the amount awarded under the conventional heads is on the higher side and no amount can be awarded for loss of love and affection.

Learned counsel for the claimants while defending the award submitted that the deceased was a Barber and the Tribunal erred in considering him as an unskilled labourer. The contention is that atleast he is to be considered as a semi-skilled labourer.

The claimants before the Tribunal failed to adduce cogent evidence with regard to monthly earning of the deceased. However, there is no serious dispute to the fact that deceased was a Barber. In such circumstances, safest yardstick is to rely upon the minimum wages prevalent in the concerned State at the time of accident. In the facts of the case, it would not be appropriate to equate the deceased with an unskilled labourer, he is to be considered as semi-skilled worker and for a semi-skilled labourer in January 2016 i.e. at the time of accident, minimum wages in the State of Haryana were ₹ 7980/-.

There is no dispute between the parties that the deceased was 34 years of age at time of accident and was self-employed. Having due regard to the decision of the Hon'ble Apex Court in the case of **National**

Insurance Company Limited v. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009 and **Hem Raj v. The Oriental Insurance Company Limited; 2018 (2) PLR 480**, 40% future prospects are to be awarded.

The claimants are entitled to ₹ 15,000/- each for funeral expenses and for loss of estate and ₹ 40,000/- are awarded for loss of consortium. No amount can be awarded for love and affection. In consonance with the decision of the Hon'ble Apex Court in the case of **Smt. Sarla Verma and others v. Delhi Transport Corporation and another; (2009) 6 SCC 121**, 1/4th deduction is applied as the deceased was survived by five dependents. It is pertinent to mention here that there is no dispute regarding multiplier.

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

Particulars	Amount (in ₹)
Monthly income of the deceased assessed	₹ 8,000/-
40 % Future prospects	₹ 3200/-
Sub Total	₹ 11,200/-
1/4 th deduction for self expenses	₹ 2800/-
Monthly Dependency	₹ 8400/-
Applying multiplier of '16' (8400X16X12)	₹ 16,12,800/-
Funeral Expenses	₹ 15,000/-
Loss of Estate	₹ 15,000/-
Loss of Consortium	₹ 40,000/-
Grand Total	₹ 16,82,800/-

Accordingly, the award dated 14.02.2017 passed by the Motor Accident Claims Tribunal, Rohtak is modified to the extent that amount of ₹ 23,69,000/- awarded by the Tribunal is reduced to ₹ 16,82,800/-. The claimants are entitled to the above said amount along with interest as

already awarded by the Tribunal from the date of filing of the claim petition till realization of the amount.

Consequently, both the appeals are disposed of in the aforesaid terms.

13.12.2018
rajeev

(AVNEESH JHINGAN)
JUDGE

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