

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 7126 of 2017

Date of decision: 20.12.2018

Birmati and others

.. Appellants

v.

Naresh Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ajit Kumar Sharma, Advocate for the appellants.

Mr. Gopal Mittal, Advocate for respondent No. 3.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 12.5.2017, passed by the Motor Accident Claims Tribunal, Rewari (for short, 'the Tribunal') has been assailed by the widow, two minor children and parents of Dev Raj (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The driver of car bearing registration No. HR-72-B-0856 (hereinafter referred to as 'the offending vehicle'), owner and the insurer (i.e. National Insurance Company Ltd.) of the offending vehicle have been arrayed as respondents No. 1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 29.1.2016, Dev Raj (deceased) along with his brother Naveen was going to the village. When they reached near Bus Stand, Patoda, Dev Raj was struck by a rashly and negligently driven offending vehicle. As a result of the impact, he fell down and sustained grievous injuries. He was taken to Rockland Hospital, Gurgaon, where he died. FIR No. 48 dated

30.1.2016 was registered at Police Station, Jhajjar.

In the claim petition filed under Section 166 of the Act, it was pleaded that the deceased was 35 years old and was earning ₹20,000/- per month by agricultural work, dairy farming and giving his engine to Nagar Nigam for cleaning the sewers and drains etc. But the claimants failed to adduce any evidence to substantiate the occupation and earning of the deceased. The Tribunal assessed his monthly earning as ₹10,000/-, made 1/4th deduction for self-expenses and applied a multiplier of 16. The Tribunal awarded a sum of ₹16,65,000/- along with interest @ 7.5% per annum. The amount awarded included ₹1,00,000/- for loss of consortium and ₹1,00,000/- for loss of love and affection and ₹25,000/- for funeral expenses.

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

There is no dispute between the parties with regard to the loss of dependency calculated by the Tribunal, i.e. ₹14,40,000/-.

Learned counsel for the appellants states that no future prospects have been awarded.

Learned counsel for the insurer while defending the award contends that the amounts awarded under the conventional heads are on the higher side and no amount can be awarded for loss of love and affection.

The deceased was 35 years old and was claimed to be a self employed. Having due regard to the decisions of the Supreme Court **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 4 RCR (Civil) 1009** and **Hem Raj v. Oriental Insurance Company Ltd., 2018 (2) PLR 480,** 40% future prospects are awarded. As there is no dispute on the loss of

dependency calculated, hence, 40% of the said amount is awarded as future prospects, i.e. ₹5,76,000/-.

As the quantum of compensation is being re-visited, it would be appropriate that the amounts to be awarded under the conventional heads are made in consonance with the decision of the Supreme Court in **Pranay Sethi's** case (supra). The claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to the widow for loss of consortium. No amount can be awarded for loss of love and affection. The amounts awarded under the conventional heads are reduced by ₹1,55,000/.

The net effect is that the award dated 12.5.2017 is modified to the extent that the amount awarded by the Tribunal to the tune of ₹16,65,000/- is enhanced by ₹4,21,000/-. The appellants shall be entitled to the enhanced amount along with interest @ 7.5% per annum from the date of filing of claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

20.12.2018

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