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

**FAO No.7422 of 2017
Date of Decision: 01.11.2018**

Sushila Devi and others

Appellants

Versus

Sanjay Sharma and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.B. Gupta, Advocate
for the appellants.

Mr. Rajneesh Malhotra, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The present appeal has been filed against award dated 06.04.2017 passed by the Motor Accident Claims Tribunal, Faridabad in MACT Case No.86, instituted on 20.07.2016.

2. The widow and three minor children of Kedar Nath are the appellants. The Driver of Car bearing Registration No. HR-29AL-8173 (hereinafter referred to as 'the offending vehicle'), owner of the offending vehicle and insurer of the offending vehicle i.e. M/s Future Generali India Insurance Company Limited have been arrayed as respondents No.1 to 3 respectively in the appeal.

3. The brief facts of the case are that on 20.06.2016, Kedar Nath alongwith Mewa Ram was going to attend his duty on a new

motorcycle, the registration number of which was applied for. When they reached near House No.1914, Sector 7-D, Faridabad, their motor cycle was hit by rashly and negligently driven offending vehicle. As a result of the impact, the occupants of the motorcycle fell down and sustained multiple injuries. They were taken to ESI Hospital, Sector 8, Faridabad where Kedar Nath succumbed to the injuries on 25.06.2016. FIR No. 428 dated 20.06.2016 was registered at Police Station, Sector 7, Faridabad.

4. Legal heirs of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal, after considering the facts and appreciating the evidence adduced, held that accident occurred due to rash and negligent driving of the offending vehicle. The Tribunal awarded a sum of ₹14,12,000/- alongwith interest @ 7.5% per annum. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

5. Heard learned counsel for the parties and perused the paper book and relevant documents.

6. Learned counsel for the appellants submitted that the deceased was drawing a salary of ₹15,743/- and the same was proved by producing a salary certificate (Ex. P-2) which was proved by deposition of PW2 Karamvir Singh, Assistant Manager, HR, PICL India Private Limited. He further contended that the Tribunal erred in awarding compensation by considering monthly income of the deceased as ₹11,000/-.

7. Learned counsel for the insurer contended that the Tribunal has already considered the basic salary and House Rent Allowance (HRA), the other allowances received by the deceased were variable in nature.

8. The contention raised by learned counsel for the appellants deserves acceptance. No doubt, Karamvir Singh PW2 in his cross-examination stated that incentives and allowances varied from month to month, this itself will not be a ground to deduct entire allowances from the salary.

9. Supreme Court in case of **Manasvi Jain vs. Delhi Transport Corporation, 2014(3) SCC 22** held as under :-

“12. This Court in Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 : (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that “while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.”

10. As per decision of the Supreme Court, only income tax payable is to be deducted. It is not the case of the parties that during the relevant assessment year, the salary of the deceased was within tax ambit. Since the incentives received were variable and there is nothing on record to establish the average of incentives received during the previous few months. In such circumstances, it is

deemed appropriate to take ₹15,000/- as the monthly salary of the deceased.

11. Since there is no issue raised with regard to deduction for self-expenses, multiplier applied and compensation awarded under conventional heads, they are kept intact.

12. The compensation is required to be revisited by considering the monthly income as ₹15,000/-.

13. In view of decisions of the Supreme Court in case of **National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157** and **Hem Raj Vs. Oriental Insurance Company Ltd. 2018(2) PLR 480**, 25% future prospects are awarded, as the deceased was 48 years of age and was having an established income.

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

Particulars	Amount (in ₹)
Monthly income of the deceased assessed	15,000/-
25% Future Prospects	3,750/-
Sub Total	18,750/-
1/4 th deduction for self expenses	4,688/-
Monthly Dependency	14,062/-
Annual Dependency	1,68,744/-
Applying multiplier of 13	21,93,672/-
Amount awarded by the Tribunal under Conventional Heads	1,25,000/-
Grand Total	23,18,672/-

14. The award dated 06.04.2017 is modified to the extent that the amount awarded by the Tribunal of ₹14,12,000/- is enhanced

to ₹23,18,672/-.

15. The claimants shall be entitled to enhancement of compensation alongwith interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization of the amount.

16. The appeal is partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

November 01, 2018

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| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |