

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

FAO No. 975 of 2018 (O&M)

Date of Decision: 25.05.2018

Baljinder Kaur and others

... Appellants

Versus

Harish Kaushal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ruhani Chadha, Advocate
for the appellants.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3 (Insurance Company).

Avneesh Jhingan, J. (Oral)

The present appeal has been filed against award dated 21.07.2017 passed by Motor Accidents Claims Tribunal, Shaheed Bhagat Singh Nagar (for short 'the Tribunal').

The brief facts of the case are that Sukhwinderjeet Singh, aged 40 years, met with a motor vehicular accident on 17.02.2016. The accident took place while he was going as pillion rider on motorcycle bearing registration No.PB-32-K-7994. At about 07.30 p.m. near Gurudwara Charan Kanwal Sahib, Jindowal, the motorcycle was struck by a car bearing registration No.CH-01-AZ-4997. As a result of the

impact, Sukhwinderjeet Singh sustained multiple injuries. He was admitted to Guru Nanak Mission Hospital, Dhahan Kaleran from there he was referred to Daya Nand Medical College & Hospital, Ludhiana. He was taken to Raja Hospital, Nawanshahr, during his treatment, he succumbed to injuries on 19.02.2016. FIR No.08 dated 19.02.2016, under Sections 279, 304-A and 427 IPC was registered at Police Station, City Banga

The widow and the parents of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The Tribunal held that accident occurred due to rash and negligent driving of the offending vehicle. The earning of the deceased was assessed as Rs.6936/- per month, after 1/3rd deduction for self expenses and applying multiplier of 15, rounded off an amount of Rs.11,28,000/- was awarded along with interest @ 7.5% per annum. The amount awarded includes Rs.10,000/- each towards loss of love and affection and for funeral expenses. An amount of Rs.25,385/- spent on the accident related treatment was reimbursed. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the amount of compensation to the claimants.

Present appeal has been filed for enhancement.

Learned counsel for the appellants contended that the Tribunal erred in assessing the monthly income of deceased as Rs.6936/- which is even less than the minimum wages prevalent in the State of

Punjab for unskilled labourer. His grievance is that the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the respondent-Insurance company, on the other hand, has contended that the claimants have failed to prove the earning of the deceased and therefore, no interference is called for in the monthly income assessed by the Tribunal. He contended that the Tribunal erred in adding 30% future prospects.

The deceased was 40 years of age at the time of accident. Even though the claimants have failed to prove his occupation and earning, in such circumstances the safest yardstick with the Tribunal was to rely upon the minimum wages of an unskilled labourer prevalent in the State at the time of accident, which were Rs.8612/-. The compensation shall be calculated on Rs.8600/-.

In consonance with the decision of Supreme Court in **National Insurance Company Limited Versus Pranay Sethi and others** **2017 AIR (SC) 5157**, 25% future prospects are to be added and the appellants would also be entitled to Rs.70,000/- under conventional heads i.e. Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses.

There is no dispute between the parties regarding 1/3rd deduction made for self expenses and 15 multiplier applied by the Tribunal.

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

Monthly income	Rs.8,600/-
Future prospects (25 %)	Rs.10,750 (Rs.8600+Rs.2150 = Rs.10750)
1/3 rd deduction	Rs.3,583/- (Rs.10750 – 3583 = 7167)
Multiplier of 15	Rs.12,90,060 /- (Rs.7167 x 12 x 15 = Rs.12,90,060)
<u>Conventional heads</u>	
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Loss of Consortium	Rs.40,000/-
Total :	Rs.70,000/-
Grand Total :	Rs.13,60,060/-

The net effect is that award dated 21.07.2017 is modified to the extent that the amount awarded by the Tribunal of Rs.11,28,000/- is enhanced to Rs.13,60,060/-

The appellants would be entitled to enhanced amount along with interest at the rate as awarded by the Tribunal from the date of filing the claim petition till realization of the amount.

The appeal is party allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

May 25, 2018
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Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No