

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 400 of 2006
DECIDED ON: MAY 03, 2019

GANPATI JHA & OTHERS

APPELLANTS

VERSUS

VINOD KUMAR AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajiv Mittal, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 02.09.2005 passed by the Motor Accident Claims Tribunal, Patiala (for brevity 'the Tribunal') has been assailed by the parents, widow and minor son of Rudar Kumar Jha (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The owner, driver and insurer (i.e. Oriental Insurance Company Ltd.) of Mahindra Jeep bearing registration No. HR-64-0520 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents No.1 to 3 respectively in the appeal.

The record of this appeal was burnt and from the salvaged

record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The factum of accident is not disputed by the parties. A motor vehicular accident took place 22.05.2003. The accident proved fatal for Rudar Kumar Jha, aged 23 years. FIR No. 254, dated 22.05.2003 was registered at Police Station Sadar, Patiala.

A claim petition was filed under Section 166 of the Act. 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 insurer of the offending vehicle was held liable to pay the compensation.

In the claim petition, it was claimed that the deceased was employed with M/s Real Gas and Chemicals Pvt. Ltd, inside Lahori Gate, Patiala and was earning ₹3000/- per month. Mr. Rajesh Singla, Director, M/s Real Gas & Chemicals Pvt. Ltd, deposited before the Tribunal as PW-3. He produced the attendance register of April, May and June 2003, Ex.P-8 to P-11, cash book and ledger, Ex.P-13 and P-14. The Tribunal assessed the monthly earning of the deceased as ₹2500/-; 1/3rd deduction for self-expenses was made and multiplier of '15' was applied. The Tribunal awarded a sum of ₹3,00,000/- alongwith interest @ 6% per annum.

Heard learned counsel for the parties and perused the record produced by them.

Learned counsel for the appellants raises following grievances:-

1. The tribunal erred in assessing the monthly earning of the deceased as ₹2500/-.
2. No future prospects have been awarded;
3. Multiplier of '15' has wrongly been applied by the Tribunal instead of '18', as the deceased was 23 years old at the time of accident.
4. No amount has been awarded under the conventional heads.

Learned counsel for the insurer while defending the award resisted any further enhancement.

There is no challenge to the age of the deceased and deduction made for self-expenses.

From perusal of the record, it is evident that it was duly proved that the deceased was earning ₹3000/- per month. The Tribunal by guess work assessed the monthly earning of the deceased as ₹2500/-. The monthly income of the deceased was proved as ₹3000/- per month, the same is considered as ₹3000/- per month for calculating the compensation.

Having due regard to the decisions of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157** and **Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480**; 40% future prospects are awarded as the deceased was below 40 years and fell in the category of self-employed or a person having established income.

The Tribunal erred in applying the multiplier of '15', as the

deceased was 23 years old at the time of accident. In consonance with the decision of the Supreme Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21*, multiplier of '18' is applied.

As the quantum of compensation is being revisited, it would be appropriate that amounts under the conventional heads are awarded as per decision of the Supreme Court in *Pranay Sethi's* case (supra). The claimants shall be entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- is awarded for loss of consortium to the widow.

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

	Head	Compensation awarded
(i)	Monthly Income	₹ 3000/- per month
(ii)	Future prospects at 40%	₹ 1200/- per month
(iii)	Total Income	₹ 4200/- per month
(iv)	Deduction of personal expenses	₹ 1400/- (i.e. 1/3 rd of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	2800x12x18= ₹6,04,800/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹ 40,000/-
	Total Compensation awarded	₹6,74,800/-

The award dated 02.09.2005 is modified to the extent that amount of ₹3,00,000/- awarded by the Tribunal is enhanced to ₹6,74,800/-.

The claimants shall be entitled the enhanced amount alongwith interest @

7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed accordingly.

(AVNEESH JHINGAN)
JUDGE

MAY 03, 2019
sham

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>