IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 5255 of 2008
DECIDED ON: MARCH 26, 2019

BHAGAT SINGH AND OTHERS

APPELLANTS

VERSUS

YASH PAL AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lokesh Sinhal, Advocate
for the appellants.

Mr. R.N. Singhal, Advocate
for the respondent-Insurance Company.

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AVNEESH JHINGAN, J (ORAL):

The office has reported that correct address of respondent No.1 has not been supplied by the learned counsel for the appellants. Learned counsel for the parties are *ad-idem* that liability to pay the amount of compensation is of the insurer only, hence, respondent No.1 is not necessary party.

The award dated 04.09.2008 passed by the Motor Accident Claims Tribunal, Faridabad (for brevity 'the Tribunal') has been assailed by the parents, widow and two minor children of Satender (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The driver, registered owner and insurer (i.e. The New India Assurance Company Ltd.) of truck bearing registration No. UP-80-AF-9969 (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.

There is no dispute between the parties with regard to the factum of accident. A motor vehicular accident took place on 05.10.2006, which proved fatal for Satender.

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 proceedings, the date of birth of the deceased was proved as 06.01.1971. Meaning thereby, that he was 35 years and few months on the date of accident. The Tribunal assessed the monthly income of the deceased as ₹3510. 1/3rd deduction for self-expenses were made and multiplier of 13 was applied. The Tribunal awarded a sum of ₹4,15,000/- alongwith interest @ 9% per annum. The amount awarded included ₹50,000/- for loss of love and affection, loss of consortium, loss of estate and funeral expenses.

Learned counsel for the appellants contends that multiplier of '13' has wrongly been applied instead of '16'. His grievance is that no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer while defending the award submits that the compensation awarded by the Tribunal is just and equitable. He resisted any further enhancement. He contends that no amount should be awarded for loss of love and affection and the amount under the conventional heads be awarded in consonance with the decision of the Supreme Court in "***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157***" .

There is no dispute between the parties with regard to income, assessed by the Tribunal.

The deceased was in the age group of 30-35, multiplier of '16' is to be applied, in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

Having due regard to the decisions of the Supreme Court in **Pranay Sethi's case (supra), 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 falls in the category of self employed or having fixed wages. Claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate. Another amount of ₹40,000/- is awarded for loss of consortium. No amount is awarded for loss of love and affection.

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

	Head	**Compensation awarded**
(i)	Monthly Income	₹ 3510/- per month
(ii)	Future prospects at 40%	₹ 1404/- per month
(iii)	Total Income	₹ 4914/- per month
(iv)	Deduction of personal expenses	₹ 1638/- (i.e. 1/3rd of total income)
(v)	Multiplier	16 (as per age of deceased)
(vi)	Loss of income	3276x12x16= ₹6,28,992/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹6,98,992/-

The award dated 04.09.2008 is modified to the extent that amount of ₹4,15,000/- awarded by the Tribunal is enhanced to ₹6,98,992/-.

The claimants shall be entitled to 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.

(AVNEESH JHINGAN)
JUDGE

MARCH 26, 2019
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Whether speaking/reasoned ***Yes/No***
Whether reportable ***Yes/No***