

205

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

FAO No.10446 of 2014 (O&M)

Date of Decision : 29.04.2019

Bali Devi and others

Appellants

Versus

Sanjay Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. K.S. Dhanora, Advocate
for the appellants.

Mr. Nishant Arora, Advocate for
Ms. Preeti Sharma, *Amicus Curiae*
for appellants No.2 and 3 (minors).

None for the Insurance Company inspite of service.

AVNEESH JHINGAN, J (Oral)

The award dated 20.03.2014 passed by the Motor Accident Claims Tribunal, Kaithal [for brevity 'the Tribunal'] in MACT Case No.27 of 2013 has been assailed by widow, two minor children and mother of Bir Singh @ Raghubir seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver, owner and insurer (i.e. Reliance General Insurance Company Ltd.) of Pick Up Jeep bearing registration No. HR -45A-4324 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts necessary for adjudication of the present appeal are that on 03.03.2013, Bir Singh alongwith his wife was going on a motorcycle. On their way, near village Sherda, the motorcycle was struck

by the offending vehicle. As a result of the impact, the riders of the motorcycle fell on the road and sustained injuries. Bir Singh succumbed to the injuries on the spot. FIR No. 38, dated 03.03.2013 was registered at Police Station Rajound.

In the claim proceedings, the Tribunal decided issue No.1 i.e. with regard to rash and negligent driving of the offending vehicle in favour of the claimants. The issue No.4 with regard breach of conditions of Insurance Policy was decided against the insurer and the driver, owner & insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

In the claim petition, it was pleaded that the deceased was driver-cum-owner of heavy transport vehicle. The claimants failed to prove his monthly income. The age of the deceased was taken as 35 years as per the post-mortem report. The Tribunal assessed monthly income of the deceased as ₹6,000/-; 20% future prospects were awarded; 1/4th deduction for self-expenses was made and multiplier of '16' was applied. The Tribunal awarded compensation of ₹10,86,800/- alongwith interest @ 7.5% per annum. The amount awarded included ₹25,000/- each for funeral expenses and for loss of consortium.

Learned counsel for the appellants raises only two-fold issues:

- firstly, that the Tribunal erred in awarding 20% future prospects instead of 40%; and
- no amount has been awarded for loss of estate.

The contesting respondent in the present appeal is insurer of the offending vehicle. None has put in appearance on behalf of insurer,

inspite of service.

The deceased was 35 years old at the time of accident and fell in the category of self-employed or a person having fixed wages. In consonance with the decision 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 to be awarded.

There is no challenge to the income assessed, 1/4th deduction made for self-expenses and multiplier applied of '16'.

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

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

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	6,000/-
40% Future Prospects	2,400/-
Sub Total	8,400/-
1/4 th deduction for self expenses	2,100/-
Monthly Dependency	6,300/-
Annual Dependency	75,600/-
Applying multiplier of '16'	12,09,600/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of consortium to the widow	40,000/-
Grand Total	12,79,600/-

The award dated 20.30.2014 passed in MACT Case No.27 of 2013 is modified to the extent that amount of ₹10,86,800/- awarded by the Tribunal is enhanced to ₹12,79,600/-.

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 in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

April 29, 2019

pankaj baweja

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