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

**FAO No. 1330 of 2014 (O&M)
DECIDED ON: MARCH 28, 2019**

SHRIRAM GENERAL INSURANCE COMPANY LTD.

APPELLANT

VERSUS

SMT. MUNNI DEVI AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Kumar, Advocate for
Mr. Ashwani Kumar, Advocate
for the appellant.

Mr. S.K. Bawa, Advocate
for respondents No.1 to 4.

Respondents No.5 and 6 were proceeded ex-parte
vide order dated 16.01.2015.

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AVNEESH JHINGAN, J (ORAL):

The award dated 27.04.2013 passed by the Motor Accident Claims Tribunal, Gurgaon (for brevity 'the Tribunal') has been assailed by the insurer of dumper bearing registration No. HR-55-D-3271 (hereinafter referred to as 'the offending vehicle').

Claimants have been arrayed as respondents No. 1 to 4 respectively in the appeal and driver and owner of the offending vehicle have been arrrayed as respondents No.5 and 6, respectively.

The brief facts necessary for adjudication of the present appeal are that on 24.12.2011, Pawan son of Ram Mehar aged about 40 years alongwith his brother-in-law was on his way to Tauru on his car bearing registration No. HR-26-J-0811. When they reached near village Sikarpur, the car was struck by a rashly and negligently driven offending vehicle. As a result of the impact, Pawan sustained grievous injuries. He was taken to Government Hospital, Nuh where he was declared dead. FIR No. 440, dated 25.12.2011 was registered.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver and owner of the offending vehicle were held liable to pay compensation but insurer was to pay the amount at first instance and was granted recovery rights.

In the claim petition it was pleaded that the deceased was 40 years old and was working as 'Operator' at Ram Dharam Kanta, Sohna Road, near HP Petrol Pump, Tauru (hereinafter referred to as 'Dharam Kanta'). His salary was claimed to be ₹20,000/- per month. The owner of the Dharam Kanta i.e. Naresh Kumar deposed before the Tribunal as PW-3. He stated that the deceased was working with him as an Operator and was being paid ₹20,000/- per month. He tendered a certificate Ex.PW-3/A. The Tribunal relied upon the witness, assessed the monthly income of the deceased as ₹20,000/- per month; ¼ deduction for self-expenses was made and multiplier of '14' was applied. The Tribunal awarded a sum of

₹25,50,000/- alongwith interest @9% per annum. The amount awarded included ₹10,000/- each for funeral expenses, for loss of consortium and for loss of love and affection.

Learned counsel for the appellant contends that income assessed by the Tribunal is on the higher side. The claimants failed to prove monthly earning of the deceased by producing reliable witness or evidence. Reliance is placed upon the cross-exmination of Naresh Kumar wherein he stated that he was earning ₹4000/- to ₹5000/- per month.

Learned counsel for respondents No.1 to 4 defends the award and contends that the Dharam Kanta was owned by the brother of the deceased and being the brother he was paying him ₹20,000/- per month as salary. His grievance is that no future prospects have been awarded and the multiplier of '14' has wrongly been applied instead of '15', as the deceased was 40 years old at the time of accident. He further submits that the amounts awarded under the conventional heads are on lower side.

The contention raised by learned counsel for the insurer deserves acceptance.

Apart from tendering a salary certificate and making a statement, Naresh Kumar-PW-3 never produced any documentary evidence with regard to the salary of ₹20,000/- being paid to the deceased. His deposition does not appear worth reliance. More so, in the cross-examination he himself admitted that he was earning ₹4000-5000 per month and it is not believable that an employer who himself was earning ₹4000-5000 per month and paying ₹20,000/- per month to an Operator. The argument raised by learned counsel for the claimants that the owner of

Dharam Kanta was brother of the deceased and hence, was paying ₹20,000/- per month as salary to the deceased does not enhance their case. There is not even an iota of evidence on record to show that the owner had a capacity to pay ₹20,000/- per month as salary to his brother. Moreso in his cross-examination he stated that he is not having a fixed income and is earning ₹4000-5000 per month. In such circumstances, the income assessed by the Tribunal cannot be sustained.

Having clue from the minimum wages prevalent in the State at the time of accident and also taking into consideration the fact that the deceased was survived by mother, widow and two children, the monthly income of the deceased is assessed as ₹6000/- per month.

Having due regard to the decisions of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others;*** ***2017 (4) RCR (Civil) 1009*** and ***Hem Raj vs. Oriental Insurance Company*** Ltd. ***2018 (2) PLR 480;*** 25% future prospects are awarded, as the deceased was below 40 years of age and was self employed having fixed wages.

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 '15' is applied. There is no dispute between the parties regarding ¼ deduction made for self-expenses.

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

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

	Head	**Compensation awarded**
(i)	Monthly income	₹ 6000/- per month
(ii)	Future prospects at 25%	₹ 1500/-
(iii)	Total Income	₹ 7500/- per month
(iv)	Deduction of personal expenses	₹ 1875/- (i.e. 1/4th of total income)
(v)	Multiplier	15 (as per age of deceased)
(vi)	Loss of income	5625x12x15= ₹10,12,500/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of Consortium	₹40,000/-
	Total Compensation awarded	₹10,82,500/-

The award dated 27.04.2013 is modified to the extent that amount of ₹25,50,000/- awarded by the Tribunal is reduced to ₹10,82,500/-.

The appellants shall be entitled to the afore-said amount alongwith interest as awarded by the Tribunal from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

MARCH 28, 2019
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No