

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 161 of 2014 (O&M)
DECIDED ON: JANUARY 24, 2019

ORIENTAL INSURANCE COMPANY LTD.

.....APPELLANT

VERSUS

SANGEETA JAIN & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Ashish Gupta, Advocate
for respondents No.1 to 3.

AVNEESH JHINGAN, J (ORAL)

The award dated 29.08.2013 passed by the Motor Accident Claims Tribunal, Nuh (for short 'the Tribunal') has been assailed by the insurer of vehicle bearing registration No. RJ-14/Temp-20-C-2266 (hereinafter referred to as the 'offending vehicle') seeking reduction of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The claimants have been arrayed as respondents No. 1 to 3 respectively in the appeal. The driver-cum-owner of the offending vehicle has been arrayed as respondent No.4 in the appeal.

The facts emanating from the record are that on 03.02.2011,

Amit Jain alongwith his friend Deepak, Vikas and Manish was going to Balaji

via Jaipur in a Maruti Car bearing registration No. HR-28-B-1096. On the way the car was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Amit Jain sustained injuries and lost his life.

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 compensation but was granted recovery rights to recover the amount of compensation from the driver-cum-owner.

In the claim petition, it was pleaded that the deceased was 28 years old at the time of accident and was working as Junior Engineer with Panchayati Raj Department, Haryana. He was drawing salary of ₹11,000/- per month. It was proved on record that the deceased was working as Junior Engineer with Panchayati Raj Department, Haryana and was drawing salary at a fixed contract rate. The Tribunal took the monthly income of the deceased as ₹11,000/- per month; 1/3rd deduction was made for self-expenses and a multiplier of 17 was applied. 50% future prospects were awarded. The Tribunal awarded a sum of ₹22,69,000/- along with interest at the rate of 9% per annum. The amount awarded included ₹25,000/- for funeral expenses.

Heard learned counsel for the parties, perused the paper book and relevant record.

Learned counsel for the appellant contends that the deceased was having a fixed salary of ₹11,000/- and the Tribunal erred in awarding 50% future prospects. As per the decisions of the Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009**

future prospects are to be awarded. He further argues that the the deceased was unmarried and the Tribunal erred in making 1/3rd deduction for self-expenses instead of 1/2.

Learned counsel for the claimants argues that no amount has been awarded for loss of estate. He further argues that fair compensation has already been awarded by the Tribunal, if it is to be reduced the same should not be ordered to be recovered from the claimants.

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

No dispute has been raised that the deceased was having a fixed salary. As per the decision of the Supreme Court in **Pranay Sethi's** case (supra) and **Hem Raj's** case (supra) where the deceased was self-employed and was having fixed income and was below 40 years of age, 40% future prospects are awarded.

The deceased was unmarried and having due regard to the decision of the Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another; (2009) 6 SCC 121**, 1/2 deduction for self-expenses is made. The claimants in the present case are parents and one major sister. There are no exceptional circumstances in the present case on record for making a diversion of 1/2 deduction for self-expenses. More so, when it has not been pleaded that the parents are very old. There is nothing on record to show that the financial status of the claimants was such that they were dependants wholly on the earnings of the deceased.

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). Thus, claimants are entitled to ₹15,000/- each for loss of estate and for funeral expenses. In view above, the compensation is recalculated as under:

	Head	Compensation awarded
(i)	Income	₹ 11000/- per month
(ii)	Future prospects at 40%	₹ 4400/- per month
(iii)	Total Income	₹ 15,400/- per month
(iv)	Deduction of personal expenses	₹7700/- (i.e. 1/2 of total income as already made by the Tribunal)
(v)	Multiplier	17
(vi)	Loss of income	7700x12x17= ₹15,70,800/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹16,00,800/-

The award dated 29.08.2013 is modified to the extent that amount of ₹22,69,000/- awarded by the Tribunal is reduced to ₹16,00,800/-.

The contention raised by learned counsel for the claimants that in case the amount of compensation is reduced no recovery should be ordered, cannot be accepted. The present one is a case, where there is a huge variation in the compensation amount, which is almost more than six lakhs. One of the major reason for variation is deduction made for self-expenses. It is not that 1/2 deduction for his self-expenses is being made as result of some subsequent change of law. The law was well settled at the time of passing of award. as per the decision of Sarla Verma's case (supra), 1/2 deduction for self-expenses is to be made in case of a bachelor.

Learned counsel for the claimants failed to assist this court that there exists any provision under the Act in which an order can be passed that in spite of insurer succeeding in the appeal, it would be denied the benefit by

ordering that no recovery of reduced amount be made.

The appeal is partly allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

JANUARY 24, 2019
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<i>Whether speaking/reasoned:</i>	<i>Yes / No</i>
<i>Whether reportable :</i>	<i>Yes / No</i>