

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 128 of 2015

DATE OF DECISION: JANUARY 18, 2019

GURDEEP THROUGH HIS LRS

.....APPELLANTS

VERSUS

ANUP KUMAR & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Jarnail Singh Seneta, Advocate
for the appellant.

Ms. Alka Joshi, Advocate
for respondent-Insurance Company.

AVNEESH JHINGAN, J (ORAL)

The award dated 19.02.2014 passed by the Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal') has been assailed by the legal heirs of Gurdeep Singh seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The driver, owner and insurer (i.e. The New India Assurance Co. Ltd.) of car bearing registration No. DL-5CF-2565 (hereinafter referred to as the 'offending vehicle') have been arrayed as respondents No. 1 to 3 respectively in the appeal.

The facts emanating from the record are that a motor vehicular accident took place on 17.02.2011 in which Gurdeep Singh lost his life. FIR No. 125, dated 17.02.2011 was registered at Police Station Civil Lines, Karnal.

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 driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation. The Tribunal assessed the monthly income of the deceased as ₹5000/- per month; 1/2 deduction was made for self expenses and a multiplier of 18 was applied. 30% future prospects were awarded. The Tribunal awarded a sum of ₹7,75,000/- along with interest at the rate of 9% per annum. The amount awarded included ₹68,000/- for medical expenses and ₹5000/- for transportation and last rites.

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

Learned counsel for the appellants contends that the Tribunal erred in awarding 30% future prospects instead of 40%. His grievance is that the amount awarded under the conventional heads are on lower side and no amount has been awarded for loss of estate.

Learned counsel for the insurer defends the award but could not raise any serious objection in view of 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*.

There is no dispute between the parties with regard to the income of the deceased assessed by the Tribunal as ₹5000/- per month; age of the deceased, 1/2 deduction made for self expenses and multiplier applied of 18.

The contention raised by learned counsel for the appellants

deserve acceptance.

Having due regard to the decisions of the Supreme Court in Pranay Sethi's case (Supra) and Hem Raj's case (Supra), as deceased was 25 years of age and will fall in category of self employed or having fixed wages, 40% future prospects are awarded. Claimants are also entitled to ₹15000/- each for funeral expenses and for loss of estate.

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

	Head	Compensation awarded
(i)	Income	₹ 5000/- per month
(ii)	Future prospects at 40%	₹ 2000/- per month
(iii)	Total Income	₹ 7000/- per month
(iv)	Deduction of personal expenses	₹3500/- (i.e. 1/2 of total income as already made by the Tribunal)
(v)	Multiplier	18
(vi)	Loss of income	3500x12x18= ₹7,56,000/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Medical Expenses	₹ 68,000/- as already awarded by the Tribunal.
	Total Compensation awarded	₹8,54,000/-

The award dated 19.02.2014 is modified to the extent that amount of ₹7,75,000/- awarded by the Tribunal is enhanced to ₹8,54,000/-. The appellant(s) shall be entitled to the enhanced amount alongwith interest as already granted 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

JANUARY 18, 2019

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Whether speaking/reasoned:

Yes / No

Whether reportable :

Yes / No