

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

**FAO No. 129 of 2015  
DECIDED ON: JANUARY 30, 2019**

**JYOTI AND OTHERS**

**.....APPELLANTS**

**VERSUS**

**SATISH KUMAR AND ANOTHER**

**.....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Karan Singh, Advocate  
for the appellants.

Mr. Punit Jain, Advocate  
for respondent No.2.

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**AVNEESH JHINGAN J. (ORAL)**

The award dated 15.01.2013 passed by the Motor Accident Claims Tribunal, Jhajjar (for brevity 'the Tribunal') has been assailed by the legal heirs of Sanjeev Kumar seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The widow, mother and two minor children of Sanjeev Kumar are the appellants. The driver-cum-owner of Tata-909 bearing registration No. HR-47-B-1288 (hereinafter referred to as 'offending vehicle'); and insurer (i.e. Cholamandlam General Insurance Co. Ltd.) of the offending vehicle have been arrayed as respondents no. 1 and 2 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are

that on 29.05.2011, Sanjeev Kumar was going on motorcycle bearing registration No. HR-14-C-7101. On his way, he was hit by a rashly and negligently driven offending vehicle. As a result of the impact, he fell down and sustained grievous injuries, he died on the way to hospital. FIR No. 297, dated 29.05.2011 was registered at Police Station Jhajjar.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver-cum-owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹6,22,000/- alongwith interest @ 6% per annum. The amount awarded included ₹5000/-for funeral expenses and ₹5,000/- to the widow for loss of consortium.

In the claim petition, it was pleaded that the deceased was an agriculturist and was earning ₹15,000/- per month. But the claimants failed to substantiate the occupation and earning of the deceased. The Tribunal assessed the loss of income of the deceased as ₹3000/- per month and multiplier of 17 was applied.

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

Learned counsel for the appellants contends that the Tribunal erred in assessing the loss of income of the deceased as ₹3000/-. He contends that atleast the minimum wages for an unskilled labourer should have been considered for calculating the compensation. He further contends that the Tribunal erred in applying the multiplier of 17 instead of 18, as the deceased was 25 years old at the time of accident. His grievance is that no future

prospects have been awarded and the amounts awarded under the conventional heads are on lower side. His further grievance is that no amount has been awarded for loss of estate.

Learned counsel for the insurer defends the award and resisted any further enhancement. He argues that no deduction for self-expenses has been made. He further contends that the claimants failed to adduce any evidence to substantiate the occupation and earning of the deceased.

There is no dispute between the parties with regard to the age of the deceased and the fact that claimants failed to prove the occupation and earning of the deceased. In such cases, the safest yardstick would be to rely upon the minimum wages prevalent in the State at the time of accident. The minimum wages at the time of accident in the State of Haryana for an unskilled labourer was ₹4500/-.

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; 40% future prospects are awarded, as the deceased was 25 years old at the time of accident and falls in the category of self employed having fixed wages.

The deceased was survived by four dependants and 1/4<sup>th</sup> deduction for self-expenses is to be made in consonance with the decision of the Supreme Court in *Smt. Sarla Verma and others vs. Delhi Transport Corporation and another;* (2009) 6 SCC 121 and multiplier of 18 is to be applied, as the deceased falls in the age group of 21 to 25.

In consonance with the decision of the Supreme Court in *Pranay Sethi's* case (supra), claimants are also entitled to ₹15000/- each for funeral

expenses and for loss of estate. The widow of the deceased is entitled to ₹40,000/- for loss of consortium.

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

|        | Head                           | Compensation awarded                              |
|--------|--------------------------------|---------------------------------------------------|
| (i)    | Income                         | ₹ 4500/- per month                                |
| (ii)   | Future prospects at 40%        | ₹ 1800/- per month                                |
| (iii)  | Total Income                   | ₹ 6300/- per month                                |
| (iv)   | Deduction of personal expenses | ₹ 1575/- (i.e. 1/4 <sup>th</sup> of total income) |
| (v)    | Multiplier                     | 18 (as per age of deceased)                       |
| (vi)   | Loss of income                 | 4725x12x18= ₹10,20,600/-                          |
| (vii)  | Funeral expenses               | ₹15,000/-                                         |
| (viii) | Loss of estate                 | ₹15,000/-                                         |
| (ix)   | Loss of consortium             | ₹40,000/-                                         |
|        | Total Compensation awarded     | ₹10,90,600/-                                      |

The award dated 15.01.2013 is modified to the extent that amount of ₹6,22,000/- awarded by the Tribunal is enhanced to ₹10,90,600/-. The appellants shall be entitled to the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

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

(AVNEESH JHINGAN)  
JUDGE

JANUARY 30, 2019  
*sham*

**Whether speaking/reasoned:** *Yes / No*  
**Whether reportable :** *Yes / No*