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

**FAO No. 187 of 2016
DECIDED ON: FEBRUARY 07, 2019**

PIYUSH THROUGH HIS MOTHER AND ANOTHER
.....APPELLANTS
VERSUS

BALKAR SINGH AND ANOTHER
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Arora, Advocate
for the appellants.

Mr. Inderjit Sharma, Advocate
for respondent No.1.

Mr. Rajbir Singh, Advocate
for respondent No.2.

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AVNEESH JHINGAN J. (ORAL)

The award dated 07.11.2013 passed by the Motor Accident Claims Tribunal, Gurdaspur (for brevity 'the Tribunal') has been assailed by the legal heirs of Jatinder Singh @ Rahul seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The widow and a minor son of Jatinder Singh @ Rahul are the appellants. The driver-cum-owner of Truck bearing registration No. PB-05-T-9244 (hereinafter referred to as 'offending vehicle'); and insurer (i.e. Shri Ram 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 22.05.2012, Jatinder Singh @ Rahul was going on motorcycle towards Gurdaspur. On his way, he was hit by a rashly and negligently driven offending vehicle. As a result of the impact, he sustained multiple grievous injuries and died on the spot. FIR No. 95, dated 23.05.2012 was registered at Police Station, City Gurdaspur.

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 of the offending vehicle was held liable to pay the compensation. The Tribunal awarded compensation of ₹3,87,200/- alongwith interest @ 8% per annum. The amount awarded included ₹20,000/- under the conventional heads.

In the claim petition, it was pleaded that the deceased was 29 years old and was working as Salesman with Majha Wine and also as a property consultant, his earning was ₹31,500/- per month. The claimants failed to substantiate the occupation and earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹3600/- per month; 1/2 deduction for self-expenses was made 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 monthly income of the deceased as ₹3600/-. He contends that atleast the minimum wages for an unskilled labourer should have been considered for calculating the compensation. He further submits that the Tribunal has wrongly made 1/2 deduction for self-expenses instead of 1/3rd. His grievance is that no future prospects have been awarded and the amounts awarded under the conventional heads are on lower side.

Learned counsel for the respondents defends the award and resisted any further enhancement. They contend that the claimants failed to adduce any evidence to substantiate the occupation and earning of the deceased.

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

There is no dispute between the parties with regard to the age of the deceased, multiplier applied. The 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 Punjab for an unskilled labourer was ₹4268/-. For the purpose of calculation the same are rounded off to ₹4300/-.

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 below 40 years old at the time of accident and falls in the category of self employed having fixed wages.

The deceased was survived by a widow and a minor son and 1/3rd 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***.

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	₹ 4300/- per month
(ii)	Future prospects at 40%	₹ 1720/- per month
(iii)	Total Income	₹ 6020/- per month
(iv)	Deduction of personal expenses	₹ 2006/- (i.e. 1/3rd of total income)
(v)	Multiplier	17 (as per age of deceased)
(vi)	Loss of income	4014x12x17= ₹8,18,856/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹8,88,856/-

The award dated 07.11.2013 is modified to the extent that amount of ₹3,87,200/- awarded by the Tribunal is enhanced to ₹8,88,856/-. 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.

In view of decision of this Court in FAO-6824 of 2015, the liability of respondents shall be joint and several.

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

(AVNEESH JHINGAN)
JUDGE

FEBRUARY 07, 2019
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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No