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

**FAO No. 462 of 2015 (O&M)
DECIDED ON: FEBRUARY 14, 2019**

SHRI RAM GENERAL INSURANCE COMPANY LTD.

.....APPELLANT

VERSUS

SMT. URMILLA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for the appellant.

Mr. Lupil Gupta, Advocate
for the respondents No.1 to 5.

AVNEESH JHINGAN, J (ORAL)

The award dated 16.10.2014 passed by the Motor Accident Claims Tribunal, Rewari (for short 'the Tribunal') in MACT Case No. 87 of 2012, has been assailed by the insurer of motorcycle bearing registration No. HR-43-A-0774 (hereinafter referred to as the 'offending vehicle').

The widow, three minor children and mother of the deceased have been arrayed as respondents No.1 to 5 and driver and owner of the offending vehicle have been arrayed as respondents No.6 and 7 in the appeal.

The brief facts necessary for the adjudication of the appeal are that on

14.12.2011, Ravi Parkash alongwith Satish was going on motorcycle bearing registration No. HR-43-7653. On their way they were hit by the offending vehicle, which was being driven by Ramphul. As a result of the impact, Ravi Parkash sustained grievous injuries. He was taken to Artemis Hospital, Gurgaon where he died during the treatment. FIR No. 259, dated 15.12.2011 was registered at Police Station Kosli.

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 on appreciating the evidence adduced, held that the accident was caused due to 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 the compensation. The Tribunal awarded compensation of ₹13,77,300/- alongwith interest @ 7% per annum. The amount awarded included ₹25,000/- for funeral expenses and transportation, ₹10,000/- for loss of estate, ₹25,000/- for loss of care and guidance for minor child and ₹1,00,000/- for loss of consortium.

In the claim petition, it was pleaded that the deceased was 30 years old, was Carpenter by profession and was earning ₹7500/- per month. But the claimants failed to substantiate the monthly earning of the deceased. Relying upon the minimum wages prevalent in the State, the Tribunal assessed the monthly earning of the deceased as ₹5250/-; $1/4^{th}$ deduction for self-expenses were made; multiplier of 16 was applied and 50% future prospects were awarded.

Learned counsel for the insurer contends that the monthly earning of the deceased assessed by the Tribunal is on higher side, as the claimants failed to prove the occupation and monthly earning of the deceased. He further contends that the Tribunal erred in awarding 50% future prospects instead of 40%. His grievance is that the amounts awarded under the conventional heads are on higher side.

Learned counsel for the claimants contends that the deceased was a Carpenter by profession and was 31 years old, survived by five dependants, the Tribunal rightly assessed the monthly income of the deceased.

It was pleaded by the claimants that deceased was a Carpenter. There was nothing on record to rebut the same, *albeit,* claimants failed to prove monthly earning of the deceased. The Tribunal assessed the monthly income of the deceased by relying upon the minimum wages prevalent in the State. In the cases where the claimants failed to prove the occupation and monthly earning of the deceased, the safest yardstick would be to rely upon the minimum wages prevalent in the State at the time of accident. It does not mean that the Court has to strictly restrict itself to the minimum wages only, it depends upon the facts and circumstances of each case, which are to be considered for assessing the monthly earning of the deceased.

Keeping in view the fact that the deceased was 31 years old and was a Carpenter by profession and also the fact that he was survived by five dependants including three minor children, the monthly earning assessed by the Tribunal cannot be said to be on higher side.

The contention of learned counsel for the appellant with regard to awarding 40% future prospects and the amounts under the conventional heads deserve acceptance.

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 and falls in the category of self employed having fixed wages.

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. Further an amount of ₹40,000/- is awarded to the widow for loss of consortium. No amount is awarded for loss of care and guidance to the minor child.

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

	Head	**Compensation awarded**
(i)	Income	₹ 5250/- per month
(ii)	Future prospects at 40%	₹ 2100/- per month
(iii)	Total Income	₹ 7350/- per month
(iv)	Deduction of personal expenses	₹ 1837/- (i.e. 1/4th of total income)
(v)	Multiplier	16 (as per age of deceased)
(vi)	Loss of income	5513x12x16= ₹10,58,496/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of Consortium	₹ 40,000/-
(x)	Medical expenses	₹ 82,000/- (already awarded by the Tribunal)
	Total Compensation awarded	₹12,10,496/-

The award dated 16.10.2014 passed in MACT case No. 87 of 2012 is modified to the extent that amount of ₹13,77,300/- awarded by the Tribunal is reduced to ₹12,10,496/-.

Vide order dated 09.01.2015, the recovery beyond ₹10,00,000/- was stayed. The claimants shall be entitled to the remaining amount alongwith interest as awarded by the Tribunal from the date of filing of the claim petition till the realization of the amount.

Accordingly, the present appeal is disposed of.

(AVNEESH JHINGAN)
JUDGE

FEBRUARY 14, 2019
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Whether speaking/reasoned Yes
Whether reportable Yes