

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

**FAO No. 6260 of 2014 (O&M)
DECIDED ON: JANUARY 23, 2019**

SMT. SAMINA AND OTHERS

.....APPELLANTS

VERSUS

RATTI KHAN AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashish Gupta, Advocate
for the appellants.

None for respondent No.1 though served.

Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate
for respondent No.3-Insurance Co.

AVNEESH JHINGAN J. (ORAL)

The legal heirs of Jaan Mohd. (deceased) are in appeal against the award dated 03.02.2014 passed by the Motor Accident Claims Tribunal, Nuh (for brevity 'the Tribunal') seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

Appellants are widow, one major son and three minor children of the

deceased. The owner and insurer (i.e. Royal Sundaram General Insurance Co. Ltd.) of the vehicle bearing registration No. RJ-02-06 Temp. 7796 (hereinafter referred to as the 'offending vehicle') have been arrayed as respondents no. 1 and 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 13.01.2013, Jaan Mohd. alongwith Rehmat and Rahish hired the offending vehicle for carrying five bags of wheat to his village Singar from village Koat. Jaan Mohd. took a seat in the cabin of the offending vehicle. The said vehicle was being driven in a rash and negligent manner. When they reached near village Fardari the offending vehicle turned turtle, due to the negligent driving of the driver of the offending vehicle. Jaan Mohd. suffered multiple grievous injuries and was taken to Ram Manohar Lohia Hospital, Delhi, where he succumbed to the injuries sustained in the accident. FIR was lodged on 17.01.2013 (wrongly mentioned in award as 17.01.2012).

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 the rash and negligent driving of the offending vehicle. The insurer of the offending vehicle was held primarily liable to pay the compensation but recovery rights were given to recover the amount of compensation from the owner of the offending vehicle.

The Tribunal assessed the monthly earning of the deceased as ₹5212/- by relying upon the minimum wages prevalent in the State of Haryana at the time of accident. The age of the deceased was taken as 48 years; 30% future prospects were awarded; 1/4th deduction was made for self-expenses and

multiplier of 13 was applied. ₹27,000/- was awarded under the conventional heads. The Tribunal awarded compensation of ₹8,20,000/-.

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

Learned counsel for the appellants contends that the amounts awarded under the conventional heads are on the lower side. His grievance is that no interest has been awarded.

Learned counsel for the insurer defends the award and resisted any further enhancement. He argues that 30% future prospects have wrongly been awarded by the Tribunal instead of 25%, as the deceased was 48 years old at the time of accident.

It is pertinent to note here that there is no dispute between the parties with regard to the monthly income of the deceased assessed by the Tribunal, deduction made for self-expenses and application of multiplier.

The contention raised by learned counsel for the appellants deserves acceptance. Hence, the amounts under the conventional heads are awarded in consonance with the decision of Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009.** Thus, claimants are also entitled to ₹15000/- each for burial expenses and for loss of estate. The widow of the deceased is entitled to ₹40,000/- for loss of consortium.

As the quantum of compensation is being revisited, future prospects are awarded in view of the decisions of the Supreme Court in **Pranay Sethi's** case (supra) and **Hem Raj vs. Oriental Insurance Company Ltd; 2018 (2) PLR 480;** i.e. 25%, as deceased was 48 years old and fall in category of self employed having fixed wages. In view of afore-said discussion, the

compensation is re-calculated as under:

	Head	Compensation awarded
(i)	Income	₹ 5212/- per month
(ii)	Future prospects at 25%	₹ 1303/- per month
(iii)	Total Income	₹ 6515/- per month
(iv)	Deduction of personal expenses	₹1628/- (i.e. 1/4 th of total income as already made by the Tribunal)
(v)	Multiplier	13
(vi)	Loss of income	4887x12x13= ₹7,62,372/-
(vii)	Burial expenses	₹15,000/-
(ix)	Loss of estate	₹15,000/-
(x)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹8,32,372/-

The award dated 03.02.2014 is modified to the extent that amount of ₹8,20,000/- awarded by the Tribunal is enhanced to ₹8,32,372/-.

The Supreme Court in **Dharampal and others Vs. U.P. State Road Transport Corporation 2008(12) SCC 208** held as under:

- “8. As per Section 171 of the Motor Vehicle Act, 1988 (hereinafter referred as 'Act') where the claim for compensation made under the act is allowed by the Claims Tribunal, the tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate from such date not earlier than the date of making claim.
9. In ***National Insurance Company Ltd. Vs. Keshav Bahadur, reported in 2004(2) RCR (Civil) 99: (2004) 2 SCC 370*** this Court has held that the provisions require payment of interest in addition to compensation already determined. Even though the expression “may”is used, a duty is laid on the Tribunal to consider the question of

interest separately with due regard to the facts and circumstances of the case. It was clearly held in the said decision that the provision of payment of interest is discretionary and is not and cannot be bound by rules.

10. Interest is compensation for forbearance or detention of money, which ought to have been paid to the claimant. No rate of interest is fixed under Section 171 of the Act and the duty has been bestowed upon the court to determine such rate of interest”

It was held that even though word 'may' is mentioned in Section 171 of the Act, a duty is cast upon the Tribunal to consider the issue of interest separately.

In the present case, there is no reason to deny interest to the claimants. It is held that claimants are entitled to compensation awarded by the Tribunal alongwith interest @ 7.5% p.a. from the date of filing of the claim petition till the realisation of amount.

The appeal is partly allowed in the aforementioned terms.

(AVNEESH JHINGAN)
JUDGE

JANUARY 23, 2019
sham

Whether speaking/reasoned:
Whether reportable :

Yes / No
Yes / No