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

****

FAO No.4800 of 2016
Date of Decision: 20.02.2019

Phoolkali

Appellant

Versus

Sidharth Balhara and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Deepak Girotra, Advocate
for the appellant.

Mr. Amardeep Hooda, Advocate
for respondent No.1.

Mr. Lalit Kumar, Advocate
for respondent No.5-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 17.03.2016 passed by the Motor Accident Claims Tribunal, Rohtak [for brevity 'the Tribunal'] has been assailed in appeal by mother of Pardeep (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

Brief facts of the case are that on 09.08.2014, Pardeep had gone to see the shooting of a film, during the shooting, he was asked to stand on the corner of the road to shoot a scene. While doing the scene, he was hit by a rashly and negligently driven car bearing registration No. DL-12C-6441 [hereinafter referred to as 'offending vehicle']. As a result of the impact, he fell down and received fatal injuries. He was taken to PGIMS, Rohtak, on the way, he succumbed to the injuries.

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. Respondents No.1 to 3 (before the Tribunal) were held jointly and severally liable to pay the compensation.

In the claim petition it was pleaded that the deceased was 20 years old at the time of accident, he was student of 10+1 and also helped his parents in agriculture and dairy farming, his monthly earning was ₹15,000/- per month. But, the claimants failed to substantiate the occupation and monthly earning of the deceased. The Tribunal assessed monthly earning of the deceased as ₹6,000/-; ½ deduction for self-expenses was made and considering the age of the claimant, multiplier of '14' was applied. The Tribunal awarded a sum of ₹6,29,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹1,00,000/- for loss of love & affection and ₹25,000/- for funeral expenses.

Heard learned counsel for the parties and perused relevant documents produced by them.

Learned counsel for the appellant contends that no future prospects have been awarded. The Tribunal erred in applying multiplier by considering the age of the claimant. The grievance is that no amount for loss of estate has been awarded.

Learned counsel(s) for the respondents contend that the deceased was a student of 10+1, his earning was not proved. The monthly earning assessed by the Tribunal is on the higher side as the minimum wages prevalent in the State at the time of accident for an unskilled labourer were ₹5,400/-. His grievance is that amounts awarded under the conventional heads are on the higher side.

There is no dispute between the parties that the deceased was 20 years old at the time of accident and was a student of 10+1. Albeit claimants failed to substantiate the occupation and monthly earning of the deceased. In cases where the claimants failed to prove monthly earning of the deceased, one of the yardstick is to rely upon the minimum wages prevalent in the State at the time of accident, but it is not the only factor for assessing the monthly earning of the deceased. The Court is empowered to assess monthly earning of the deceased considering overall facts and age of the deceased in order to arrive at just and equitable compensation. Nothing has been produced to show that monthly earning assessed by the Tribunal is exorbitant, no interference is called for in the monthly earning of the deceased assessed by the Tribunal.

Having due regard to the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** 40% future prospects are awarded as the deceased was below 40 years of age and falls under the category of self-employed or a person having fixed wages.

The deceased was 20 years of age at the time of accident, as per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***, multiplier of '18' is to be applied.

The issue regarding applying multiplier considering the age of the deceased and not as per the age of the claimant is no longer *res-integra.* The Supreme Court in the case of ***Sube Singh and another vs. Shyam Singh (Dead) and others; 2018 (3) SCC 18*** held as under:

> *"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."*
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> *(emphasis supplied)*

As the quantum of compensation is being revisited, it is considered appropriate to award the amounts under the conventional heads in consonance with the decision of the Supreme Court in ***Pranay Sethi's*** case (supra). The claimant is entitled to ₹15,000/- each for funeral expenses and for loss of estate. No amount for loss of love & affection is awarded.

In view of above discussion, compensation is re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	6,000/-
40 % Future Prospects	(+) 2,400/-
Sub Total	8,400/-
1/2 deduction for self expenses	4,200/-
Monthly Dependency	4,200/-
Annual Dependency	50,400/-
Applying multiplier of '18'	**9,07,200/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**9,37,200/-**

The award dated 17.03.2016 is modified to the extent that amount of ₹6,29,000/- awarded by the Tribunal is enhanced to ₹9,37,200/-.

The claimants shall be entitled to the enhanced amount alogwith interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

February 20, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes