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

**FAO No.6554 of 2015 (O&M)
Date of Decision: 30.01.2019**

Smt. Panchi Bai and others

Appellants

Versus

Mubeen and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

None for respondents No.1 and 2.

Mr. Rajbir Singh, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The present appeal has been preferred seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] for death of Naubat Ram @ Daulat Ram, aged 45 years. He was a Mason and his income was claimed to be ₹15,000/- per month. The claimants were widow, two minor children and mother of the deceased. The Motor Accident Claims Tribunal, Gurgaon [for brevity 'the Tribunal'] awarded compensation of ₹8,80,200/- alongwith interest @ 7.5% per annum vide award dated 20.05.2015 in MACT Case No.43 of 2014.

The owner, driver and insurer (i.e. Bharti AXA General Insurance Company Ltd.) of motorcycle bearing registration No. HR-28B-5423 [hereinafter referred to as 'offending vehicle'] are respondents No.1 to 3 respectively in the appeal.

The facts necessary for adjudication of the present appeal are that on 17.08.2013, Harpal alongwith Naubat Ram @ Daulat Ram was going to Palwal on a motorcycle whose registration number was applied for at the time of accident. The said motorcycle was being driven by Harpal. On their way, when they reached near village Badarur, the motor cycle was hit by a rashly and negligently driven offending vehicle. As a result, Naubat Ram sustained grievous injuries and died on the way to the hospital.

A claim petition was filed. It was pleaded that deceased was 45 years old at the time of accident and was a Mason by profession and was earning ₹15,000/- per month. But the claimants failed to substantiate monthly earning of the deceased. The Tribunal assessed monthly earning of the deceased as ₹4,000/-; 30% future prospects were awarded; 1/4th deduction for self-expenses was made and multiplier of '14' was applied. The Tribunal awarded ₹25,000/- for funeral expenses, ₹1,00,000/- for loss of consortium and ₹1,00,000/- for loss of love and affection.

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. The owner, driver and insurer of the offending vehicle were held jointly and severally

liable to pay the compensation.

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

Learned counsel for the appellants contends that the deceased was a Mason by profession, his monthly income assessed by the Tribunal is even less than the minimum wages of an unskilled labourer. He contends that minimum wages for a semi-skilled labourer may be considered for awarding the compensation.

Learned counsel for the insurer argues that the claimants failed to prove the occupation and monthly earning of the deceased. He contends that the Tribunal erred in awarding 30% future prospects instead of 25%. His grievance is that the amounts awarded under the conventional heads are on the higher side and no amount can be awarded for loss of love & affection.

There is no dispute between the parties with regard to age of the deceased; 1/4th deduction made for self-expenses and multiplier of '14' applied.

The claimants pleaded that the deceased was working as a Mason and his widow deposed before the Tribunal that her husband was working as a Mason albeit, they failed to substantiate his income. In such circumstances, the safest yardstick is to treat the deceased (Mason) as a semi-skilled labourer. The minimum wages for semi-skilled labourer in the State of Haryana at the time of accident were ₹5,600/-. The compensation shall be calculated considering the said amount as monthly income.

As the quantum of compensation is re-visited, it would be appropriate that future prospects are awarded in consonance with the decisions of the Supreme Court in cases of **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**. The deceased was 45 years old at the time of accident and he falls within the category of self-employed or having fixed wages, hence 25% future prospects are awarded.

In consonance with the decision of the Supreme Court in **Pranay Sethi's** case (supra), the claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium. No amount is awarded for loss of love & affection.

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

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	5,600/-
25 % Future Prospects	1,400/-
Sub Total	7,000/-
1/4 th deduction for self expenses	1,750/-
Monthly Dependency	5,250/-
Annual Dependency	63,000/-
Applying multiplier of '14'	8,82,000/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of consortium to widow	40,000/-
Grand Total	9,52,000/-

The award dated 20.05.2015 is modified to the extent

that amount of ₹8,80,200/- awarded by the Tribunal is enhanced to ₹9,52,000/-.

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

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

January 30th, 2019

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| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |