

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3510 of 2017 (O&M)
DATE OF DECISION: JANUARY 17, 2019

RELIANCE GENERAL INSURANCE CO. LTD.

.....APPELLANT

VERSUS

MANJU RANI & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Ashit Malik, Advocate
for respondents No.1 to 4.

AVNEESH JHINGAN, J.(oral)

The award dated 29.03.2017 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short 'the Tribunal') has been assailed by the insurer of motorcycle bearing registration No. HR-07-M-7823 (hereinafter referred to as 'offending vehicle') for reducing the compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The claimants have been arrayed as respondents No. 1 to 4, respectively in the appeal. The driver-cum-owner has been arrayed as respondent No.5 in the appeal.

The facts emanating from the record are that on 08.07.2016, Rajesh Saini was going on a motorcycle bearing registration No. HR-02-P-2495. When he reached near village Bhallar, his motorcycle was hit by a

rashly and negligently driven offending vehicle. As a result of the impact, he lost his control over the motorcycle and struck against Eucalyptus tree. He sustained grievous injuries and was shifted to Community Health Centre, Ladwa where he was declared dead by the doctors. FIR No. 104, dated 09.07.2016 was registered at Police Station Babain.

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 rash and negligent driving of the offending vehicle. The driver-cum-owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation. The Tribunal assessed the monthly income of the deceased as ₹7976/- per month; 1/3rd deduction was made for self expenses and a multiplier of 18 was applied; 50% future prospects were awarded. The Tribunal awarded a sum of ₹20,97,816/- along with interest at the rate of 9% per annum. The amount awarded included ₹25,000/- for transportation and funeral expenses. ₹1,00,000/- for loss of consortium to the widow; ₹1,00,000/- for loss of estate and ₹1,50,000/- for love and affection.

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

Learned counsel for the appellant contends that the claimants failed to prove the occupation and earning of the deceased. The Tribunal erred in awarding 50% future prospects instead of 40%. His grievance is that the amounts awarded under the conventional heads are on the higher side and no amount should be awarded for loss of love and affection.

Learned counsel for the claimants argues that it was pleaded before the Tribunal that the deceased was working as Welder and the said

pleadings were not contradicted. The Tribunal assessed the monthly income of the deceased as ₹7976/-, which is even less than the minimum wages prevalent in the State at the time of accident. His grievance is that at least the deceased should have been considered as semi-skilled labourer.

There is no dispute between the parties with regard to the fact that the deceased was 24 years old at the time of accident and the fact that the monthly earning of the deceased was not proved; 1/3rd deduction was made for self expenses and multiplier of 18 was applied.

The contention raised by learned counsel for the appellant deserves 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. 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. No amount can be awarded for loss of love and affection.

As the quantum of compensation is being revisited, it is deemed appropriate that the monthly earning of the deceased is assessed atleast as per the minimum wages prevalent at the time of accident in the State. It was pleaded that the deceased was working as a Welder, hence, he is treated as a semi-skilled labourer. The minimum wages for a semi-skilled labourer at the relevant time in the State was ₹8474/-. For the purpose of calculation the same is rounded off to ₹8500/-.

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

	Head	Compensation awarded
(i)	Income	₹ 8500/- per month
(ii)	Future prospects at 40%	₹ 3400/- per month
(iii)	Total Income	₹ 11900/- per month
(iv)	Deduction of personal expenses	₹3967/- (i.e. 1/ ^{3rd} of total income as already made by the Tribunal)
(v)	Multiplier	18
(vi)	Loss of income	7933x12x18= ₹17,13,528/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹17,83,528/-

The award dated 29.03.2017 is modified to the extent that amount of ₹20,97,816/- awarded by the Tribunal is reduced to ₹17,83,528/-.

It is pertinent to mention here that vide order dated 19.05.2017, while issuing notice of motion recovery of amount of compensation beyond ₹14,50,000/- was stayed. Claimants shall be entitled to the balance amount alongwith interest as awarded by the Tribunal from the date of filing of the claim petition till the realization of the amount.

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

(AVNEESH JHINGAN)
JUDGE

JANUARY 17, 2019

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Whether speaking/reasoned:

Yes / No

Whether reportable :

Yes / No