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

**FAO-1022-2018 (O&M)
Date of decision:-29.01.2019**

Bheem Singh and others

....Appellants

Versus

Shiv Dutt and others

....Respondents

CORAM: HON'BLE Mr. JUSTICE AVNEESH JHINGAN

Present:- Ms. Kamlesh, Advocate for
Mr. Manish Soni, Advocate
for the appellants.

Mr. P.R.Yadav, Advocate
for respondents No. 1 and 2.

Mr. Amit K. Goyal, Advocate
for respondent-Insurance Company.

AVNEESH JHINGAN J. (Oral)

The award dated 10.05.2017 passed by the Motor Accident Claims Tribunal, Gurugram (for short 'the Tribunal') has been assailed by the parents, sister and brother of Ashok Kumar seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The driver of the car bearing registration No. HR-36L-0728 (hereinafter referred to as the 'offending vehicle'), owner and insurer (i.e. The New India Assurance Company Ltd.) have been arrayed as respondents in the appeal.

The facts emanating from the record are that on 20.03.2016, motor vehicular accident took place as a result of rash and negligent driving of the offending vehicle. Accident proved fatal for Ashok Kumar. FIR No. 61 was registered at Police Station Farrukh Nagar, District Gurugram.

A claim petition was filed and it was pleaded that the deceased was 20 years old and was a student of ITI, Gurugram and was earning ₹ 25,000/- per month by doing part time work. The claimants failed to substantiate the earning of the deceased, however, it was proved by Ex. P-2 to P-5 and by deposition of Lalit Kumar-PW-3 that Ashok Kumar was a student of ITI in the course of Plumber. The Tribunal assessed monthly earning of the deceased as ₹ 6,000/- per month, ½ deduction was made for self-expenses as he was unmarried and multiplier of '14' was applied considering the age of parents of the deceased and the Tribunal awarded a sum of ₹ 6,29,000/- along with interest @ 8% per annum. The amount awarded included ₹ 1,00,000/- for loss of love and affection and ₹ 25,000/- for funeral expenses.

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 the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

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

Learned counsel for the appellants raised three fold grievances. Firstly that the deceased was student of ITI, Gurugram, the Tribunal erred in treating him as an unskilled labourer. Secondly, no future prospects have been awarded and lastly, the tribunal erred in applying multiplier by considering the age of the parents of the deceased.

Learned counsel for the respondents while defending the award argued that the deceased was only a student of ITI and Tribunal has rightly treated him as unskilled labourer. It was further argued that the amount under the conventional heads be strictly awarded in consonance with the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and no amount can be awarded for loss of love and affection.

There is no dispute between the parties with regard to the fact that the deceased was 20 years of age at the time of accident, the deceased was student of ITI, Gurugram, and to ½ deduction made for self-expenses.

The deceased was 20 years old young boy who was a student of ITI, it would not be appropriate to consider him as an unskilled labourer. He was a student in a trade of plumber, and it would be appropriate that the minimum wages for a skilled labourer are considered for awarding the compensation. The minimum wages for skilled labourer in the State of Haryana was ₹9726 and the same is rounded as ₹9700/-for the purpose of calculation.

Having due regard to the decisions of the Supreme Court in ***Pranay Sethi's case (supra) and Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480***, the fact that the deceased was 20 years of age and would come in the category of self-employed or having fixed wages, 40% future prospects are awarded.

The claimants are entitled to ₹ 15,000/- each for funeral expenses and for loss of estate. No amount can be awarded for loss of love and affection as per the the decision of the Supreme Court in ***Pranay Sethi's case (supra)***.

The Tribunal erred in applying the multiplier considering the age of the parents of the deceased. In consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***, multiplier is to be applied considering the age of the deceased and in the present case, multiplier of 18 is to be applied.

The issue regarding applying multiplier by considering the age of the deceased and not of the dependants, 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*** has 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.”

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

<i>Particulars</i>	<i>Amount (in ₹)</i>
Monthly income of the deceased as assessed	9,700/-
40 % Future Prospects	3,880/-
Sub Total	13,580/-
½ deduction for self expenses	6,790/-
Applying multiplier of '18'	14,66,640/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Grand Total	14,96,640

The award dated 10.05.2017 is modified to the extent that the amount of ₹ 6,29,000/- awarded by the Tribunal is enhanced to ₹14,96,640/-.

The appellants shall be entitled to the enhanced amount alongwith interest at the rate 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.

29th January, 2019

shabha

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *Yes*