

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

**FAO No. 3656 of 2017
DECIDED ON: FEBRUARY 25, 2019**

BHATERI DEVI AND OTHERS

.....APPELLANTS

VERSUS

SANDEEP AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Munish Kumar Garg, Advocate
for the appellants.

None for respondent No.1.

Mr. R.N. Singhal, Advocate
for respondent No.2

AVNEESH JHINGAN J. (ORAL)

The award dated 04.11.2016 passed by the Motor Accident Claims Tribunal, Sonipat (for brevity 'the Tribunal') has been assailed by the legal heirs of Vicky seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The widow, minor son and parents of Vicky are the appellants. The driver-cum-owner and insurer (i.e. United India Insurance Company Ltd) of three wheeler bearing registration No. HR-69-B-8496 (hereinafter referred to as 'offending vehicle'); have been arrayed as respondents no. 1 and 2 respectively

in the appeal.

The brief facts necessary for adjudication of the present appeal are that a motor vehicular accident took place on 03.07.2015. The said accident proved fatal for Vicky. FIR No. 273, dated 04.07.2015 was registered.

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 rash and negligent driving of the offending vehicle. The driver-cum-owner of the offending vehicle was held liable to pay the compensation. The Tribunal awarded a compensation of ₹10,99,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹1,00,000/- for loss of consortium, ₹25,000/- for funeral expenses and ₹10,000/- for transportation and ₹1,00,000/- for love and affection.

In the claim petition, it was pleaded that the deceased was doing the job of White Washing and used to earn ₹35,000/- per month. But the claimants failed to prove the occupation and monthly earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹6000/-, 1/4th deduction for self-expenses was made and multiplier of 16 was applied.

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

Learned counsel for the appellants contends that no future prospects have been awarded. His grievance is that no amount has been awarded for loss of estate.

Learned counsel for the insurer defends the award and submits that the amounts under the conventional heads are on higher side and no amount can be awarded for loss of love and affection. He further contends that the deceased

was survived by three dependants and 1/4th deduction for self-expenses has wrongly been made by the Tribunal

The contention of learned counsel for the insurer challenging the 1/4th deduction is not well founded. The deceased was survived by widow, minor son, mother and father who were above 60 years. There is nothing on record to show that the parents at that age were not dependant on the earning of his son. Learned counsel for the insurer has not been able to point out any evidence to rebut the fact that father of the deceased was not dependant on earning of the deceased.

The contention raised by the learned counsel for the appellants regarding future prospects deserves acceptance.

There is no challenge to the loss of dependency calculated by the Tribunal as ₹8,64,000/-.

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, as the deceased was below 40 years and falls in the category of self employed or having fixed wages. 40% of ₹8,64,000/- is ₹3,45,600/-

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded in consonance with the decision of the Supreme Court in *Pranay Sethi's* case (supra). The claimants are entitled to ₹15000/- each for funeral expenses and for loss of estate. Further an amount of ₹40,000/- is awarded to the widow for

loss of consortium. The amount under the conventional heads is reduced to ₹70,000/-. No amount is awarded for loss of love and affection.

The award dated 29.10.2015 is modified to the extent that amount of ₹10,99,000/- awarded by the Tribunal is enhanced by ₹1,80,600/-. The appellants shall be entitled to the enhanced amount alongwith interest as already awarded by the Tribunal from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

FEBRUARY 25, 2019
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<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether reportable :</i>	<i>Yes</i>