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

**FAO No.2149 of 2018 (O&M)
Date of Decision: 04.02.2019**

Jagdish Singh and others

Appellants

Versus

Harjinder Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

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 Harbans Singh, aged 74 years. The claimants were in the age group of 44-48 years at the time of filing of claim petition i.e. in the year 2016. The appellants are children of Harbans Singh (deceased). The Motor Accident Claims Tribunal, Mohali [for brevity 'the Tribunal'] has awarded compensation of ₹7,72,177/- alongwith interest @ 6% per annum vide award dated 28.08.2017.

The driver, owner and insurer (i.e. The Oriental Insurance

Company Ltd.) of truck bearing registration No. PB-46F-9550 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts in brief are that on 04.08.2016, Harbans Singh alongwith his grand daughter was riding a Scooter bearing registration No. PB-65U-8198. On their way, the Scooter was hit by a rashly and negligently driven offending vehicle. As a result of the impact, both the occupants of Scooter sustained injuries. They were taken to Civil Hospital, Kurali from where they were referred to PGIMER, Chandigarh. Harbans Singh died in the PGIMER, Chandigarh during the course of treatment. FIR No.98, dated 04.08.2016 was registered.

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. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

Before the Tribunal, it was pleaded that the deceased was earning ₹30,000/- per month. The Tribunal considered the fact that he was a pensioner. There was no evidence to substantiate monthly earning of the deceased. The Tribunal assessed income of the deceased as ₹24,000/- per month; ½ deduction for self-expenses was made and multiplier of '5' was applied.

Learned counsel for the appellants contends that

claimants were four sons and daughters of the deceased. The Tribunal erred in making $\frac{1}{2}$ deduction for self-expenses instead of $\frac{1}{3}$ deduction.

The contention raised by learned counsel for the appellants lacks merit. From the perusal of the award, it is evident that the claimants were in their mid 40's. The deceased is not survived by widow. As per pension documents, he was 74 years old at the time of accident.

The Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21**, has given a chart for making deduction for self-expenses holding that where the deceased is survived by 2-3 dependents, $\frac{1}{3}$ rd deduction is to be made and in case deceased is a bachelor, $\frac{1}{2}$ deduction for self-expenses is to be made.

In the present case, keeping in view the age of the claimants, it can be said that they are settled and working on their own. No special circumstances are established by learned counsel for the appellant for making $\frac{1}{3}$ rd deduction for self-expenses instead of $\frac{1}{2}$ deduction. At this stage of age, there are number of expenses including medical expenses which the deceased would be requiring to maintain himself. Therefore, it cannot be said that deceased would be spending $\frac{1}{3}$ rd of his pension on himself and giving remaining to his children who are more than 40 years of age.

No interference is called for in the impugned award. The appeal is dismissed *in limine*.

This appeal is accompanied by an application seeking condonation of delay of 54 days in filing the appeal. Since the appeal has been decided on merits, the issue of limitation is kept open.

[AVNEESH JHINGAN]
JUDGE

February 04, 2019

pankaj baweja

1. Whether speaking/ reasoned

:

Yes/ No
2. Whether reportable

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Yes/ No