

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

FAO No.3686 of 2018

Date of Decision: 07.03.2019

Sunita Devi and others

Appellants

Versus

Tayyab Hussain and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. Paul S. Saini, Advocate
for respondent No.2-Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 06.10.2017 passed by the Motor Accident Claims Tribunal, Mewat [for brevity 'the Tribunal'] has been assailed by the widow, mother and three children of Rajender Singh (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The registered owner-cum-driver and insurer (i.e. The New India Assurance Company Ltd.) of vehicle bearing registration No. HR-99/YB-Temp-4657 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 and 2 respectively in the appeal.

Brief facts of the case are that a motor vehicular accident took place on 25.04.2016. The accident was caused due to the rash and negligent driving of the offending vehicle. Rajender Singh, aged 45 years sustained injuries and died on 01.05.2016. FIR No. 204, dated 26.04.2016 was registered at Police Station Ramgarh.

A claim petition was filed under Section 166 of the Act. It was claimed that the deceased was an agriculturist and earning ₹15,000/- per month, but the claimants failed to prove the same. The Tribunal after considering the facts and evidence adduced, assessed monthly income of the deceased as ₹10,000/-; ¼ deduction for self-expenses was made as the deceased was survived by five dependents and multiplier of '14' was applied. The Tribunal awarded compensation of ₹16,13,611/- alongwith interest @ 7% per annum. The amount awarded included ₹1,00,000/- for loss of consortium; ₹1,00,000/- for loss of love & affection; ₹25,000/- for funeral expenses; ₹10,000 for transportation and ₹1,18,611/- towards medical expenses.

Learned counsel for the appellants contends that no future prospects have been awarded.

Learned counsel for the insurer argues that the amounts awarded under the conventional heads are on the higher side. He further argues that no amount be awarded for loss of love & affection. He further states that income of the deceased assessed by the Tribunal i.e. ₹10,000/- is on the higher side.

The contention raised by learned counsel for the insurer

challenging the income is not well founded. There is no basis to challenge the same. The Tribunal has assessed the income of the deceased relying upon the fact that the deceased was Manager of his agricultural land and was rearing buffaloes. Minimum wages prevalent in the State at the time of accident is just one of the criteria to be considered while assessing the income of the deceased and it is the duty of the court to arrive at just and equitable compensation.

Since the deceased was 45 years old at the time of accident and falls under the category of self-employed or a person having fixed wages, in consonance with the decisions of the Supreme Court in **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**, 25% future prospects are awarded. As the loss of dependency i.e. ₹12,60,000/- calculated by the Tribunal is not being interfered with, 25% of the said amount i.e. ₹3,15,000/- are awarded as future prospects.

As the quantum of compensation is being revisited, the amounts awarded under the conventional heads are made in consonance with the decision of the Supreme Court in **Pranay Sethi's case** (supra). The claimants shall be 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.

The net result is that the award dated 06.10.2017 is

modified to the extent that the amount of ₹16,13,611/- awarded by the Tribunal is enhanced by ₹1,50,000/-.

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

The appeal is partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

March 07, 2019

pankaj baweja

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