

**FAO Nos. 6642 of 2017 (O&M) and
FAO No. 8436 of 2017 (O&M)**

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

**FAO No. 6642 of 2017 (O&M)
DECIDED ON: FEBRUARY 11, 2019**

ORIENTAL INSURANCE COMPANY

.....APPELLANT

VERSUS

NIRMALA AND OTHERS

.....RESPONDENTS

AND

FAO No. 8436 of 2017 (O&M)

NIRMALA

.....APPELLANT

VERSUS

SURESH KUMAR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

**Present: Mr. Vinod Chaudhri, Advocate
for the appellant in FAO No. 6642 of 2017 and
for respondent No. 4 in FAO No. 8436 of 2017**

**Mr. Balkar Singh, Advocate
for the appellant in FAO No. 8436 of 2017 and
for respondent No.1 in FAO No. 6642 of 2017.**

Mr. Naveen Singh Panwar, Advocate
for respondent No.2 in FAO No. 6642 of 2017 and
for respondent No. 1 in FAO No. 8436 of 2017.

AVNEESH JHINGAN, J (ORAL)

The aforesaid two appeals are being disposed of by a common order as they are arising out of the same accident and same award.

The award dated 13.07.2017 passed by the Motor Accident Claims Tribunal, Sonipat (for short 'the Tribunal') has been assailed by filing two appeals, one by the insurer of bus bearing registration No. HR-69-A-6147 (hereinafter referred to as the 'offending vehicle') and another by the claimant i.e. mother of Sunil (since deceased).

The grievance in both the appeals is with regard to quantum of compensation awarded by the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The brief facts necessary for the adjudication of the appeal(s) are that on 27.09.2015, Sunil alongwith Jyoti Sawrup and Deepanshu was going on a Swift Car bearing registration No. HR-06-E-2475. The said car was being driven by Sunil. On the way, the car was hit by a rashly and negligently driven offending vehicle. Due to the impact all the three occupants of the car suffered injuries which proved fatal for Sunil. FIR No. 172, dated 28.09.2015 was registered at Police Station Mohana, District Sonipat.

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, owner and insurer of the offending vehicle were held

jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹10,47,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹25,000/-for funeral expenses and ₹50,000/- for loss of love and affection.

In a claim petition, it was pleaded that the deceased was 24 years old and was working as attendant/helper in a grocery shop and was earning ₹15,000/- per month. Though a salary certificate was produced and the owner of the shop deposed before the Tribunal, as he could not produce any document, his deposition was not found to be worth reliance. The Tribunal assessed the monthly income of the deceased as ₹6000/- per month; 1/2 deduction for self-expenses was made and multiplier of 18 was applied and 50% future prospects were awarded.

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

Learned counsel for the insurer contends that the Tribunal erred in awarding 50% future prospects instead of 40%. His grievance is that no amount is to be awarded for loss of love and affection.

Learned counsel for the claimant contends that the income assessed by the Tribunal is on the lower side. His grievance is that no amount has been awarded for loss of estate.

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 having fixed wages.

In consonance with the decision of the Supreme Court in *Pranay Sethi's* case (supra), claimant is also entitled to ₹15000/- each for funeral expenses and for loss of estate.

The claimant failed to prove the occupation and earning of the deceased. In such cases, the safest yardstick would be to rely upon the minimum wages prevalent in the State at the time of accident. There is nothing on record to show the qualification possessed by the deceased and hence, he was treated as a labourer. The income assessed by the Tribunal is as per the minimum wages prevalent in the State at the time of accident, hence, no interference is called for.

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

	Head	Compensation awarded
(i)	Income	₹ 6000/- per month
(ii)	Future prospects at 40%	₹ 2400/- per month
(iii)	Total Income	₹ 8400/- per month
(iv)	Deduction of personal expenses	₹ 4200/- (i.e. 1/2 of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	4200x12x18= ₹9,07,200/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹9,37,200/-

The award dated 13.07.2017 is modified to the extent that amount of ₹10,47,000/- awarded by the Tribunal is reduced to ₹9,37,200/-.

Vide order dated 09.10.2017 the amount of compensation beyond

₹5,25,000/- was stayed. The claimant shall be entitled to the remaining amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

Accordingly, both the appeals are disposed of.

FEBRUARY 11, 2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No