

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

**FAO No.5584 of 2018
Date of Decision : 04.04.2019**

Charanjeet Kaur and others

Appellant

Versus

Nishan Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjay Jain, Advocate
for the appellant.

Mr. Rajesh Chaudhary, Advocate
for respondent No.3.

AVNEESH JHINGAN, J (Oral)

The award dated 13.12.2017 passed by the Motor Accident Claims Tribunal, Patiala [for brevity 'the Tribunal'] has been assailed by widow, three minor children and parents of Avtar Singh, seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver, owner and insurer (i.e. Oriental Insurance Company Ltd.) of Truck bearing registration No. PB-03AA-8669 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

There is no dispute with regard to factum of accident.

A motor vehicular accident took place on 21.11.2016 which

proved fatal for Avtar Singh, aged 30 years. The accident was result of rash and negligent driving of the offending vehicle. FIR No.98, dated 22.11.2016 was registered at Police Station Sadar Rajpura.

In the claim petition, it was pleaded that the deceased was doing work of preparing iron net for Lintels and was earning ₹25,000/- per month. The claimants failed to prove occupation and monthly earning of the deceased. The Tribunal assessed monthly earning of the deceased as ₹7,500/- per month treating him to be an unskilled labourer; 40% future prospects were awarded; 1/4th deduction for self-expenses was made as the deceased fell in the category who was survived by four to six dependents. Multiplier of '17' was applied considering the fact that age of the deceased was 30 years. The Tribunal awarded compensation of ₹16,76,500/- alongwith interest @ 7% per annum. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The amount awarded included ₹70,000/- under the conventional heads.

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

The only grievance raised by learned counsel for the appellants is that income of the deceased assessed by the Tribunal is on the lower side. It is argued that he was preparing iron nets for Lintels and as such he should not be considered as

an unskilled labourer.

Learned counsel for the insurer defends the award and argues that the claimants failed to adduce any evidence to prove occupation and monthly earning of the deceased. He defends the income assessed by the Tribunal.

In cases where the occupation and earning of the deceased are not proved, one of the yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. In the present case, it was pleaded that the deceased was doing work of preparing iron nets for Lintels and he was survived by widow, three minor children and old parents. Considering the facts, in order to arrive at just and equitable compensation and having a clue from the minimum wages, income of the deceased is assessed as ₹8,000/- per month.

In view of above discussion, compensation is re-calculated as under:

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	8,000/-
40 % Future Prospects	3,200/-
Sub Total	11,200/-
1/4 th deduction for self expenses	2,800/-
Monthly Dependency	8,400/-
Annual Dependency	1,00,800/-
Applying multiplier of '17'	17,13,600/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of consortium to the widow	40,000/-
Grand Total	17,83,600/-

The award dated 13.12.2017 is modified to the extent that amount of ₹16,76,500/- awarded by the Tribunal is enhanced to ₹17,83,600/-.

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 allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

April 04, 2019

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |