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

**FAO No. 8230 of 2017
DECIDED ON: JANUARY 08, 2019**

GURMEET KAUR & OTHERS

.....APPELLANTS

VERSUS

KULWANT SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Aakash Singla, Advocate
for the appellants.

Mr. M.B. Jain, Advocate for
Mr. Punit Jain, Advocate
for respondent No.3.

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AVNEESH JHINGAN J. (ORAL)

The legal heirs of Pala Singh (deceased) are in appeal against the award dated 15.03.2017 passed by the Motor Accident Claims Tribunal, Barnala (for brevity 'the Tribunal') seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The driver of truck bearing registration No. PB-03-AC-9106 (hereinafter referred to as 'offending vehicle'); owner and insurer (i.e. Iffco Tokio General Insurance Co. Ltd.) of the offending vehicle have been arrayed as respondents no. 1 to 3 respectively in the appeal.

The facts emanating from the record are that on 02.02.2014, Pala Singh was going to Trident Factory Dhaula where he was employed. He was travelling in a Tata Sumo bearing registration No. HR-01-D-3026 along-with other co-workers. On their way due to fog, the tata sumo dashed into the offending vehicle, which was parked on the road without any indicator or parking lights. As a result of the impact, Pala Singh sustained grievous injuries. He was taken to hospital but he succumbed to his injuries on the way to hospital. FIR No. 22, dated 02.02.2014 was registered at Police Station City, Barnala.

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 the negligence of the offending vehicle, as it was wrongly parked on the road without any reflector or the parking lights being switched on. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹8,93,000/- alongwith interest @ 9% per annum. The amount awarded included ₹1,25,000/- under the conventional heads.

In the claim petition, it was pleaded that the age of the deceased at the time of accident was 35 years and was working with Trident India Limited, Dhaula. The appointment letter of the deceased was produced as Ex.P1 and the salary slip was produced as Ex.P2. As per the salary slip the deceased was earning ₹7718/- per month and after deduction of provident fund etc. his carry home salary was ₹6868/-. The Tribunal assessed the monthly income of the deceased as ₹6000/- per month by relying upon his basic salary. 1/3rd 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 the Tribunal erred in assessing the monthly income of the deceased as ₹6000/-. As per salary slip, the gross salary of the deceased was ₹7718/- per month and the compensation should have been calculated by considering his gross salary. He further contends that the deceased was survived by four dependants and the Tribunal erred in making 1/3rd deduction for self-expenses instead of 1/4th. His grievance is that no future prospects have been awarded.

Learned counsel for the insurer defends the award and resisted any further enhancement. He argues that as per the postmortem report the deceased was 30 years old whereas, the claimants in the claim petition had pleaded him to be 35 years. His grievance is that the amount awarded under the conventional heads are on the higher side.

From the perusal of the appointment letter, it is evident that initially the deceased was appointed for six months on temporary basis. The salary slip for the month of January 2014, was produced meaning thereby, that he continued for almost five years with the employer and he was having a gross salary of ₹7718/- per month. The compensation shall be calculated by rounding of the figure to ₹7720/-.

As, the deceased was below 40 years of age and was having a permanent job, 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;*** 50% future prospects are awarded. Claimants are also entitled to ₹15000/- each for funeral expenses and for loss of estate. The widow of the deceased is entitled to ₹40,000/- for loss of consortium.

The deceased was survived by four dependants and 1/4th deduction for self-expenses is to be made in consonance with the decision of the Supreme Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another; (2009) 6 SCC 121.*** As per the pleadings and the postmortem report the deceased was in the age group of 30 to 35, hence, the multiplier of 16 has rightly been applied by the Tribunal.

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

	Head	**Compensation awarded**
(i)	Income	₹ 7720/- per month
(ii)	Future prospects at 50%	₹ 3860/- per month
(iii)	Total Income	₹ 11580/- per month
(iv)	Deduction of personal expenses	₹2895/- (i.e. 1/4th of total income)
(v)	Multiplier	16 (as per age of deceased)
(vi)	Loss of income	8685x12x16= ₹16,67,520/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹17,37,520/-

The award dated 15.03.2017 is modified to the extent that amount of ₹8,93,000/- awarded by the Tribunal is enhanced to ₹17,37,520/-. The appellants shall be entitled to the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is partly allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

JANUARY 08, 2019
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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No