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

FAO No.5946 of 2018

Date of Decision : 09.04.2019

Babli Devi and others

Appellants

Versus

Jitender and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S.K. Yadav, Advocate
for the appellants.

Mr. R.S. Sharma, Advocate
for respondent No.2-Insurance Company.

AVNEESH JHINGAN, J (Oral)

The award dated 14.03.2018 passed by the Motor Accident Claims Tribunal, Narnaul [for brevity 'the Tribunal'] has been assailed by widow and three children of Raj Kumar seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver-cum-owner and insurer (i.e. Oriental Insurance Company Ltd.) of vehicle bearing registration No. HR-35N-3858 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 and 2 respectively in the appeal.

There is no dispute between the parties with regard to factum of accident. A motor vehicular accident took place on 15.07.2017. The accident proved fatal for Raj Kumar, aged 45

years. The accident was result of 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.

The only issue raised is that the deceased was equated with unskilled labourer but income assessed by the Tribunal i.e. ₹8,000/- per month is less than the minimum wages prevalent in the State at the time of accident.

In the claim petition, the claimants failed to prove occupation and earning of the deceased. The Tribunal considering the deceased to be an unskilled labourer assessed his monthly earning as ₹8,000/-; 25% future prospects were awarded; multiplier of '14' was applied and 1/4th deduction for self-expenses was made in consonance with the decision of the Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.** The Tribunal awarded ₹14,82,786/- alongwith interest @ 7.5% per annum. The amount awarded included ₹1,52,786/- for medical expenses and ₹70,000/- towards conventional heads.

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

Learned counsel for the appellants contends that minimum wages for an unskilled labourer were ₹8,280/- at the time of accident but the Tribunal assessed monthly income of the deceased as ₹8,000/-.

Learned counsel for the insurer defends the income assessed and argues that the claimants failed to prove occupation and earning of the deceased.

The contention raised by learned counsel for the appellants deserves acceptance. In cases where the claimants failed to prove occupation and earning of the deceased, the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. In the present case, there is no reason to assess monthly earning less than the minimum wages. The monthly income of the deceased is assessed as ₹8,280/-, the same is rounded off to ₹8,300/- for calculation purpose.

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

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	8,300/-
25 % Future Prospects	2,075/-
Sub Total	10,375/-
¼ th deduction for self expenses	2,594/-
Monthly Dependency	7,781/-
Annual Dependency	93,372/-
Applying multiplier of '14'	13,07,208/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of consortium to the widow	40,000/-
Medical Expenses as awarded by the Tribunal	1,52,786/-
Grand Total	15,29,994/-

The award dated 14.03.2018 is modified to the extent that amount of ₹14,82,786/- awarded by the Tribunal is enhanced to ₹15,29,994/-.

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 09, 2019
pankaj baweja

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