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

**FAO No.847 of 2018 (O&M) and
XOBJC No.121-CII of 2018 (O&M)
Date of Decision: 14.01.2019**

The New India Assurance Company Ltd.

Appellant

Versus

Jaibiri and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Varun Sharma, Advocate for
Mr. Satpal Dhamija, Advocate
for the appellant.

Mr. J.P. Sharma, Advocate
for respondents No.1 to 4-Cross Objectors.

Mr. Atul Yadav, Advocate
for respondent No.6.

AVNEESH JHINGAN, J (Oral):

The award dated 08.09.2017 passed by the Motor Accident Claims Tribunal, Narnaul [for brevity 'the Tribunal'] has been challenged in appeal by the insurer of truck bearing registration No. HR-61C-3161 [hereinafter referred to as 'offending vehicle'] whereas cross-objection has been filed by the claimants. The grievance raised in the appeal and cross-objection is regarding quantum of compensation awarded under Section 166 of the Motor

Vehicles Act, 1988 [for brevity 'the Act'].

A claim petition was filed by widow, three minor children of Mahak Singh. The driver, owner and insurer of the offending vehicle were arrayed as respondents No.1 to 3 respectively in the claim petition.

The facts necessary for adjudication of the present cases are that on 28.11.2015, Mahak Singh was coming from Tiba Basahi after loading concrete in truck bearing registration No. HR-66-9019. On his way, his truck was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Mahak Singh sustained grievous injuries, he was shifted to General Hospital, Bhiwani, where he succumbed to the injuries. FIR No.465 dated 29.11.2015 was registered at Police Station Tosham, District Bhiwani.

The Tribunal after considering the facts and appreciating the evidence adduced held that accident was caused due to 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 Tribunal awarded a sum of ₹18,00,865/- alongwith interest @ 7.5% per annum. The amount awarded included ₹1,00,000/- for loss of consortium, ₹1,50,000/- for loss of love & affection and ₹25,000/- for funeral expenses and transportation.

In the claim petition, it was pleaded that the deceased was 53 years old at the time of accident and was a truck driver. His

earning was claimed to be as ₹20,500/- per month. But, the claimants failed to substantiate the monthly earning of the deceased. The Tribunal assessed the monthly earning of the deceased as ₹11,856/-, 30% future prospects were added, multiplier of 11 was applied and 1/4th deduction for self-expenses was made.

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

Learned counsel for the insurer argues that the claimants failed to prove monthly earning of the deceased. The Tribunal erred in assessing monthly earning of the deceased as ₹11,865/- which is much beyond the minimum wages of an unskilled labourer. He contends that the Tribunal erred in awarding 30% future prospects instead of 10%. The grievance raised is that no amount can be awarded for loss of love & affection and amounts awarded towards funeral expenses and loss of consortium are on the higher side.

Learned counsel for the claimants argues that the Salary Certificate of the deceased was produced before the Tribunal and even the proprietor of Jogender Carrier, Ganesh Market Singhana Road, Narnaul deposed as PW4 to prove monthly earning of the deceased. He further argues that it was not disputed that deceased was working as a driver.

The claimants produced a Salary Certificate and in support of the said Certificate, the proprietor of the Transport Firm deposed stating that the deceased was getting salary of ₹20,500/-

per month. His evidence was found not worth reliance as the proprietor failed to produce any documentary evidence to substantiate the fact that deceased was being paid ₹20,500/- per month as salary. In such circumstances, the safest yardstick is to rely upon the minimum wages prevalent in the State of Haryana at the time of accident. Keeping in view the fact that deceased was driver of Truck, it would not be appropriate to equate the deceased as an unskilled labourer. Having a clue from minimum wages prevalent in the State of Haryana and considering the fact that he was a trained driver and is survived by three minor children, his monthly earning is taken as ₹9,000/- per month.

Having due regard to 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**, and considering the fact that deceased was 53 years old, 10% future prospects are awarded. The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- are awarded to the widow for loss of consortium.

There is no dispute between the parties with regard to 1/4th deduction made for self-expenses and multiplier of '11' applied.

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

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	9,000/-
10% Future Prospects	900/-
Sub Total	9,900/-
1/4 th deduction for self expenses	2,475/-
Monthly Dependency	7,425/-
Annual Dependency	89,100/-
Applying multiplier of '11'	9,80,100/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of consortium to widow	40,000/-
Grand Total	10,50,100/-

The award dated 08.09.2017 is modified to the extent that amount of ₹18,00,865/- awarded by the Tribunal is reduced to ₹10,50,100/-. While issuing notice in the appeal, the disbursement of awarded amount beyond 60% was stayed. The claimants shall be entitled to the balance amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the amount.

Both the appeal and cross-objection are disposed of in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

January 14th, 2019
pankaj baweja

1. Whether speaking/reasoned

:

Yes/ No
2. Whether reportable

:

Yes/ No