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

**FAO No. 903 of 2018 (O&M)
DECIDED ON: MARCH 26, 2019**

UNITED INDIA INSURANCE COMPANY LTD.

.....APPELLANT

VERSUS

POONAM DUTTA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. P.S. Miglani, Advocate
for respondents No.1 and 2.

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AVNEESH JHINGAN J. (ORAL)

The award dated 25.10.2017 passed by the Motor Accident Claims Tribunal, Ferozepur (for brevity 'the Tribunal') has been assailed by the insurer of car bearing registration No. PB-05-S-613 (hereinafter referred to as the 'offending vehicle').

Claimants have been arrayed as respondents No.1 and 2. The owner-cum-driver of the offending vehicle has been arrayed as respondent No. 3 .

The facts with regard to the accident are not disputed by the parties. A motor vehicular accident took place on 21.11.2015. The accident proved fatal

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for Sameer Datta aged 21 years.

A claim proceedings under Section 166 of the Motor Vehicles Act, 1988 (for short '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 owner-cum-driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

In the claim proceedings, it was proved that the deceased was 21 years of age, having diploma of Electrician. It was pleaded that he was working as Lineman in Punjab State Power Corporation Ltd. (for brevity 'PSPCL'), Ferozepur and was getting a salary of ₹6000/- per month. As per the appointment letter produced as Ex.C4 the deceased was to be paid ₹2100/- per month as stipend for the first year and ₹2400/- per month for the second year. Though appointment letter i.e offer letter was produced as Ex.C4 but there was nothing on record to show that the deceased had actually joined the department. It was further pleaded that the deceased was also working with Kissan Contractor and Engineering Works and earning ₹15,000/- per month. Claimants failed to substantiate the employment and the earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹10,000/- per month. ½ deduction for self expenses was made, 50% future prospects were awarded and multiplier of '18' was applied.

The Tribunal awarded a compensation of ₹16,45,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹25,000/- for last rites.

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Learned counsel for the appellant contends that the Tribunal erred in awarding 50% future prospects instead of 40%, as the deceased was not having a permanent job. He further contends that the claimants failed to prove the employment of the deceased, the monthly earning of the deceased should have been awarded considering the stipend to be given by PSPCL.

Learned counsel for respondents No.1 and 2 contends that the deceased was a diploma holder, he was just 21 years old and had a bright future ahead of him, the income assessed by the Tribunal needs no interference. His grievance is that no amount is awarded for loss of estate.

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

It is established that the deceased was 21 years old and was having a diploma of Electrician. Meaning thereby, he was a skilled person, *albeit* claimants failed to establish that he was either employed with the contractor or had joined the PSPCL as Lineman.

The Supreme Court in ***"M.R. Krishna Murthi vs. New India Assurance Co. Ltd. and others***, ***Civil Appeal Nos. 2476-2477 of 2019, decided on 05.03.2019***, has carved out principles for dealing with the cases where the deceased was a student or non-earning person. It was held as under:-

> *"23. From the conjoint reading of the aforesaid judgments, inter alia, following principles can be culled out which would be relevant for deciding the instant appeal:*
>
> *(i) In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be*

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the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the poseer would be: what would have been his income had he joined a service commensurating with the said course. That can be the future earning.

(ii) There may be cases where the victim is not, at that stage, doing any such course to get a particular job. He or she may be studying in a school. In such a case, future career would depend upon multiple factors like the family background, choice/interest of the complainant to pursue a particular career, facilities available to him/her for adopting such a career, the favourable surrounding circumstances to see which would have enabled the claimant to successfully pick up the said career etc.

If the chosen field is employment, then the future earning can be taken on the basis of salary and allowances which are payable for such calling. In case, career is a particular profession, the future earning would depend on host of other factors on the basis of which chances to achieve success in such a profession can be ascertained.

(iii) There may be cases like Deo Patodi where even a student, the claimant would have made earnings on part-time basis or would have received offer for a particular job. In such cases, these factors would also assume relevance.

(iv) After ascertaining the likely earning of the victim in the aforesaid manner, the nature of injuries and disability suffered as a result thereof would be kept in mind while determining as to how much earning has been affected thereby. Here, impact of injuries on functional disability is to be seen. In case of death of victim, it would result in total loss of earning. In the case of injuries, the nature of disability becomes important. Such an exercise was undertaken in N. Manjegowda case."

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The Supreme Court held that while assessing the compensation for loss of future earning, career prospects has to be looked into, specially keeping in view of the professional course being pursued by the deceased and as to what would be the income if the deceased would have joined the service.

Having clue from the minimum wages prevalent in the State at the time of accident for a skilled-labourer the monthly income of the deceased is assessed as ₹8600/-.

As per the decision of the Supreme Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***, the Tribunal rightly made 1/2 deduction for self-expenses and applied multiplier of '18'.

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 it is not established that the deceased was having a permanent job.

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded in consonance with the decision of the Supreme Court in ***Pranay Sethi's*** case (supra). The claimants are entitled to ₹15000/- each for funeral expenses and for loss of estate.

In view of above discussion the compensation is recalculated as under:

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	Head	**Compensation awarded**
(i)	Monthly income	₹ 8600/- per month
(ii)	Future prospects at 40%	₹ 3440/-
(iii)	Total Income	₹ 12,040/- per month
(iv)	Deduction of personal expenses	₹ 6020/- (i.e. 1/2 of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	6020x12x18= ₹13,00,320/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹13,30,320/-

The award dated 25.10.2017 is modified to the extent that amount of ₹16,45,000/- awarded by the Tribunal is reduced to ₹13,30,320/-.

While issuing notice of motion vide order dated 15.02.2018, recovery of amount of compensation beyond ₹12 lacs was stayed. The claimants shall be entitled to the balance amount alongwith interest as awarded by the Tribunal from the date of filing of the claim petition till the realization of the amount.

The appeal is disposed of, accordingly.

(AVNEESH JHINGAN)
JUDGE

MARCH 26, 2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No

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