IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 103 of 2017 (O&M)
DECIDED ON: APRIL 10, 2019

SUNAINA DEVI AND OTHERS

APPELLANTS

VERSUS

MOHD. SALIM AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Chhabra, Advocate
for the appellants.

Mr. Rajneesh Malhotra, Advocate
for the respondent-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 09.05.2016 passed by the Motor Accident Claims Tribunal, Faridabad (for brevity 'the Tribunal') has been assailed by the widow and three children of Binay Kumar (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The registered owner, driver and insurer (i.e. SBI General Insurance Company Ltd.) of truck bearing registration No. HR-38-Q-7610 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents No.1 to 3 respectively in the appeal.

The factum of accident is not disputed by the parties. A motor vehicular accident took place 25.10.2014. The accident proved fatal for

Binay Kumar, aged 47 years. FIR No. 276, dated 26.10.2014 was registered at Police Station Sector 31, Faridabad.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the 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.

In the claim petition, it was proved that the deceased retired from Indian Army and was employed with M/s Shri Shyamji Security Services and was drawing salary of ₹12,845/- per month. The Tribunal while awarding the compensation only considered the basic salary of the deceased i.e ₹9400/- per month; 1/4th deduction for self-expenses was made and multiplier of '13' was applied.

The Tribunal awarded a sum of ₹12,24,800/- alongwith interest @ 7.5% per annum. The amount awarded included ₹25,000/- for funeral expenses and ₹1,00,000/- for loss of love and affection.

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

Learned counsel for the appellants argues that the Tribunal erred in considering the basic salary of the deceased and not adding the House Rent Allowance of ₹ 2831/-. It is contended that the compensation be awarded by considering the salary as ₹12,269/-. The grievance raised is that no future prospects have been awarded.

Learned counsel for the insurer in view of settled proposition of law could not raise any serious dispute with regard to the fact that the basic salary + HRA be considered for awarding the compensation. He argues that the amounts awarded under the conventional heads are on higher side.

The contention raised by learned counsel for the appellants with regard to the fact that HRA be included deserves acceptance.

The Supreme Court in ***Manasvi Jain vs. Delhi Transport Corporation, (2014) 3 SCC 22*** has held as under :-

> *"12. This Court in Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 : (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased."*

The compensation shall be recalculated by taking the salary of the deceased as ₹12,269/- 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;*** 30% future prospects are awarded as the deceased fell in the age group of 40-50 and was having permanent job.

There is no dispute between the parties with regard to 1/4th deduction made for self-expenses and multiplier of '13' applied.

As the quantum of compensation is being revisited, it would be appropriate that amounts under the conventional heads are awarded as per decision of the Supreme Court in ***Pranay Sethi's*** case (supra). The claimants shall be entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- is awarded for loss of consortium to the widow.

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

	Head	**Compensation awarded**
(i)	Monthly Income	₹ 12,269/- per month
(ii)	Future prospects at 30%	₹ 3681/- per month
(iii)	Total Income	₹ 15,950/- per month
(iv)	Deduction of personal expenses	₹ 3987/- (i.e. 1/4th of total income)
(v)	Multiplier	13 (as per age of deceased)
(vi)	Loss of income	11963x12x13= ₹18,66,228/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of Consortium	₹ 40,000/-
	Total Compensation awarded	₹19,36,228/-

The award dated 09.05.2016 is modified to the extent that amount of ₹12,24,800/- awarded by the Tribunal is enhanced to ₹19,36,228/-.

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.

(AVNEESH JHINGAN)
JUDGE

APRIL 10, 2019
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Whether speaking/reasoned ***Yes/No***
Whether reportable ***Yes/No***