

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

648

FAO No.4584 of 2012

Decided on : 31.10.2017

Naresho Devi and others

*... Appellants**Versus*

Deepak Sharma and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Amit Kohar, Advocate for the appellants.
Mr.Rajesh K.Sharma, Advocate for respondent No.3.

Avneesh Jhingan , J. (Oral)

Present appeal has been filed against the award dated 3.3.2012 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhari (for short 'the Tribunal').

2. Shiv Dayal aged 37 years lost his life in an accident which took place on 11.12.2010. His motorcycle bearing registration No.HR-05Q-3495 was hit by rashly and negligently driven tractor-trolley bearing registration No.HR-01U-2334. FIR No.127 dated 12.12.2010 was registered at Police Station Chhachhrauli.

3. The widow, three minor children and mother of the deceased moved a claim petition under Section 166 of the Motor Vehicles Act (for short 'the Act').

4. The Tribunal awarded a sum of Rs.6,07,300/- along with interest at the rate of 7.5% per annum.

5. The grievance raised by the learned counsel for the appellants is that the deceased was an agriculturist and doing dairy farming. He proved by producing jamabandis and Form 'J' issued under **Punjab**

Agricultural Produce Markets Act, 1961 (as applicable to Haryana) (showing the sale of agricultural produce) that he was an agriculturist. He states that in absence of any rebuttal to the said evidence, the Tribunal has taken the monthly earning of the deceased that of an unskilled labourer. He further argues that the amounts awarded under the conventional heads are on the lower side.

6. Learned counsel for the Insurance company argues that the claimants had failed to establish the actual earning of the deceased. In such circumstance, there was no option left with the Tribunal except to treat him as unskilled labourer. He defended the amount awarded under the conventional heads.

7. The Tribunal in absence of any specific proof with regard to the monthly earning of the deceased was right in relying upon the minimum wages prevailing at the relevant period. Present is not a case where the claimants had totally failed to adduce any evidence about the occupation of the deceased. It would be another thing to say that actual quantum of earning they may not have been able to establish. Once it was established that he was rearing cattle and was indulging in agricultural, it would not have been appropriate to treat him as an unskilled labourer. Rearing of cattle and knowledge of agriculture needs something more than mere physical work and labour. He could have been treated at least as a semi-skilled labourer and take his minimum wages as semi-skilled labourer at the relevant time. It may be mentioned here that during the relevant time, the minimum wages prevailing in the State of Haryana for a semi skilled labourer was Rs.4608/-. It would be appropriate that loss of

dependency is recalculated by taking monthly earning of the deceased as Rs.4600/- as a round figure. Since there is no dispute on deduction and the multiplier, and the same is being applied as has been done by the tribunal.

Re-calculation

[Rs.4600 X 12 = Rs.55,200/- less deduction 1/4th for self expenses (Rs.13,800), Rs.41,400 X 15=Rs.6,21,000/-]

8. The contention of the learned counsel for the appellants with regard to enhancement of the conventional heads also deserves acceptance and the sum of Rs.10,000/- awarded for loss of consortium, is enhanced to Rs.40,000/- A sum of Rs.5000/- awarded towards loss of estate is enhanced to Rs.15,000/- and funeral expenses of Rs.5000/- are enhanced to Rs.15,000/-.

9. The award dated 3.3.2012 is modified to the extent that the amount awarded of Rs.6,07,300/- is enhanced to Rs.6,91,000/-. The claimants shall be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till its realization of the amount.

10 The appeal is partly allowed as per the above terms.

[Avneesh Jhingan]
Judge

31.10.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No