

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6694 of 2016

Date of decision: 17.12.2018

Smt. Nihali and others

.. Appellants

v.

Pawan Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rakesh Gilhotra, Advocate for
Mr. Vinod Bhardwaj, Advocate for the appellants.

Mr. R. N. Singhal, Advocate for respondent No. 3.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 18.7.2016, passed by the Motor Accident Claims Tribunal, Kaithal (for brevity, 'the Tribunal'), has been assailed by the legal heirs of Baldev Singh seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The driver of truck bearing registration No. PB-11AQ-8115 (hereinafter referred to as 'the offending vehicle'), owner and the insurer, (i.e., The New India Assurance Company Ltd.) of the offending vehicle have been arrayed as respondents No. 1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 27.12.2015, Baldev Singh was returning to village Titram on motor cycle bearing registration No. HR-08R-8022. On his way, the motor cycle was struck by the offending vehicle which was being driven by respondent No. 1 in a rash and negligent manner. As a result of the impact,

Baldev Singh fell down and was ran over by the offending vehicle. He died

at the spot. FIR No. 113 dated 27.12.2015 was registered at Police Station, Titram.

A claim petition under Section 166 of the Act was filed. 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 driver, owner and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹2,85,000/- along with interest @ 7.5% per annum. The amount awarded included ₹25,000/- towards funeral expenses and ₹1,00,000/- to the widow for loss of consortium.

In the claim petition, it was pleaded that the deceased was 84 years of age and was an agriculturist. His income was claimed to be ₹ 30,000/- per month. But, the claimants failed to substantiate the occupation and the earnings of the deceased. Consequently, the Tribunal assessed the monthly earning of the deceased @ ₹ 4,000/-; 1/3rd deduction was made for self expenses and multiplier of five was applied.

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

Learned counsel for the appellants contends that the income assessed by the Tribunal @ ₹ 4,000/- per month is on the lower side as the deceased was an agriculturist.

Learned counsel for the insurer defends the award and contends that the amount awarded under the conventional heads are on the higher side. Moreover, the deceased was 84 years of age and the claimants were not able to substantiate his earning and occupation.

There is no dispute between the parties that the deceased was

84 years old at the time of accident.

Apart from a bald statement that he was an agriculturist and was earning ₹30,000/- per month, no cogent evidence was produced. The Tribunal, considering the age of the deceased and keeping in view that no evidence is on record regarding his monthly earning, assessed the monthly income @ ₹4,000/-. It would not be appropriate to equate a 84 years old person with an un-skilled labourer and expect that he would be earning minimum wages as per the notification. In such circumstances, no interference is called for in the monthly earning assessed by the Tribunal.

There is another aspect that as per the decision of the Supreme Court in National Insurance Company Ltd. v. Pranay Sethi and others, AIR 2017 SC 5157, ₹ 70,000/- are to be awarded under conventional heads, whereas the Tribunal has already awarded ₹1,25,000/-. In such circumstances, no interference is called for in the impugned award.

Accordingly, the appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

17.12.2018
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No