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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.2696 of 2001
Date of Decision: 14.02.2019

Smt. Darshani and another

Appellants

Versus

State of Haryana and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants.

None for respondents No.1, 2 and 3.

Mr. R.N. Singal, Advocate
for respondent No.4.

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<u>AVNEESH JHINGAN, J (Oral):</u>

The award dated 10.01.2001 passed by the Motor Accident Claims Tribunal, Karnal [for brevity 'the Tribunal'] has been assailed in appeal by the claimants seeking enhancement of compensation awarded under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The appellants are parents of Baldev. State of Haryana (owner); The General Manager, Haryana Roadways (actual user); driver and insurer (i.e. The Oriental Insurance Company Ltd.) of bus bearing registration No. HR-05PA-211 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 4 respectively in the appeal.

Brief facts of the case are that on 28.04.1999, Baldev (deceased) had boarded the offending vehicle from Karnal for going to his village Peont. The offending vehicle was full thus, he climbed on the roof top of the offending vehicle. On the way, the driver swerved the offending vehicle with a jerk, as a result of which, the deceased fell down from the roof top and sustained multiple injuries. He was taken to Civil Hospital, Karnal from where he was referred to PGI, Chandigarh, where he succumbed to the injuries.

A claim petition was filed under Section 163-A of the Act. It was pleaded that deceased was 20 years old and a Plumber by profession, the claimants failed to prove monthly earning of the deceased. The Tribunal considered notional annual income of the deceased as ₹15,000/-; 1/3rd deduction for self-expenses was made and multiplier of '16' was applied. The Tribunal awarded ₹1,64,000/- alongwith interest @ 12% per annum. The amount awarded included ₹4,000/- for funeral expenses. The driver, owner and insurer were held jointly and severally liable to pay compensation.

Learned counsel for the appellants contends that the Tribunal erred in taking the notional annual income as ₹15,000/- as the said notional income is for non-earning persons. In the present case, the deceased was working as a Plumber. His grievance is that income as per minimum wages prevalent in the State at the time of accident be considered for awarding the compensation, as per Second Schedule to the Act.

Learned counsel for the insurer while defending the award argues that the claimants failed to prove the occupation and monthly earning of the deceased. In such circumstances, the Tribunal rightly assessed annual notional income of the deceased as ₹15,000/-.

The deceased was 20 years old at the time of accident. It was pleaded that he was working as a Plumber, albeit the claimants failed to produce any documentary evidence to establish the earning capacity of the deceased. In such circumstances, safest yardstick is to rely upon minimum wages prevalent in the State at the time of accident. Considering the facts of case and having clue from minimum wages prevalent at relevant time, the income of deceased is assessed as ₹1,900/- per month. As such the same is being considered for calculating the compensation. The conventional heads are also made as per Second Schedule to the Act.

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	1,900/-
1/3rd deduction for self expenses	633/-
Monthly Dependency	1,267/-
Annual Dependency	15,204/-
Applying multiplier of '16'	**2,43,264/-**
Funeral Expenses	**2,000/-**
Loss of Estate	**2,500/-**
Grand Total	**2,47,764/-**

The award dated 10.01.2001 is modified to the extent that amount of ₹1,64,000/- awarded by the Tribunal is enhanced to

₹2,47,764/-.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing of claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

February 14, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes

2. Whether reportable : Yes