

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

FAO-10631-2014 (O&M)
Date of decision: 30.09.2019

Smt. Saroj Devi and others

...Appellants

Versus

Khyali Ram and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. M.S. Randhawa, Advocate for the appellants.

Mr. J.P. Sharma, Advocate for respondent No.2.

Mr. R.C. Gupta, Advocate for respondent No.3.

H.S. MADAAN, J. (Oral)

One Virender son of Harphool Singh, stated to be serving as Constable in IRB, lost his life in a motor vehicular accident, which took place on 11.04.2013 at about 10 p.m. in the area of Sarali, statedly on account of rash and negligent driving of Alto Car bearing registration No.HR-35-E-7749 (for short 'the offending car') by respondent No.1 Khyali Ram. Legal heirs of such deceased, namely Smt. Saroj Devi-widow and others had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Khyali Ram-driver, Shishpal Yadav-owner and The New India Assurance Company Ltd., New Delhi-insurer of the offending car.

On getting notice, all the three respondents had appeared and

offered a contest. On conclusion of trial, the Motor Accidents Claims Tribunal, Narnaul (for brevity 'the Tribunal'), vide award dated 15.09.2014, accepted the petition along with other connection petition and compensation of Rs.7,26,200/- with interest @ 9% p.a. from the date of filing of petition till actual realization was awarded to the claimants, payable by all the three respondents jointly and severally.

The claimants were not satisfied with the amount of compensation awarded by the Tribunal and have approached this Court seeking enhancement of compensation, by way of filing the present appeal, notice of which was given to respondents. Respondent No.1 did not appear despite service and was proceeded against *ex parte*, whereas, respondent Nos. 2 & 3 have appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

During the pendency of the present appeal, the appellants/claimants have moved an application under Order 41 Rule 27 CPC for placing on record, salary statement of the deceased, by way of additional evidence, submitting that the said statement could not be produced before the Tribunal during the trial. This document, if found to be genuine, would go to the root of the matter, for assessing the income of the deceased so as to determine the quantum of compensation. However, the respondents ought to be given an opportunity to test its genuineness and produce evidence in rebuttal. Therefore, as agreed upon by learned counsel for the parties, the appeal is accepted and this impugned award is set aside with regard to the claim petition filed by

Saroj Devi and others and the case is remanded to the Tribunal with a direction to allow the claimants to lead evidence with regard to salary statement of the deceased by summoning official concerned from IRB, employer of the deceased.

Counsel for the respondents would be given adequate opportunities to cross examine that official and thereafter, respondents would be given reasonable time to lead evidence in rebuttal, if they so desire. Thereafter, the Tribunal is to decide the claim petition afresh, after hearing learned counsel for the parties. Since the case is quite old, the Tribunal is directed to complete the entire exercise within six months from the date of receipt of copy of this order there. The parties through counsel are directed to appear before the Tribunal on 17.10.2019. The Registry is directed to send a copy of this order to the Tribunal at once and lower Court record be also sent back to the Tribunal, at the earliest.

30.09.2019

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(H.S. MADAAN)
JUDGE

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