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

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**1.** **FAO No.8104 of 2015 (O&M)**
**Date of Decision : 27.03.2019**

Oriental Insurance Company Ltd.

Appellant

Versus

Mamta and others

Respondents

**2.** **FAO No.5890 of of 2015**

Mamta Devi and others

Appellant

Versus

Manjit Singh and others

Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Lalit Kumar, Advocate and
Mr. Ashwani Talwar, Advocate
for the appellant [in FAO No.8104 of 2015]
for respondent No.3 [in FAO No.5890 of 2015].

Mr. Sagar Aggarwal, Advocate
for the appellants [in FAO No.5890 of 2015]
for respondents No.1 to 5 [in FAO No.8104 of 2015].

Mr. Saurabh Garg, Advocate
for respondent No.6 [in FAO No.8104 of 2015].

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**AVNEESH JHINGAN, J (Oral):**

The award dated 20.05.2015 passed by the Motor Accident Claims Tribunal, Kaithal [for brevity 'the Tribunal'] has been assailed by filing two appeals. One appeal has been filed by the insurer of Innova Car bearing registration No. PB-11BF-

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9023 [hereinafter referred to as 'offending vehicle'] and another by the claimants seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

[2] The factum with regard to accident is not in dispute amongst the parties. A motor vehicular accident took place on 18.04.2014, which proved fatal for Raj Kumar. The accident took place due to the rash and negligent driving of the offending vehicle. The Tribunal assessed earning of the deceased as ₹3,37,486/- per annum taking an average of previous three years' income as per Income Tax Returns. The Tribunal awarded ₹49,96,985/- as compensation alongwith interest @ 7% per annum. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

[3] The deceased was an agent of Life Insurance Corporation. The bone of contention in the appeal filed by the insurer is that the deceased was having recurring income from the Policies already done by him in the earlier years and the income shown in the Income Tax Returns includes that income also. The argument raised is that the said income would continue even after the death of Raj Kumar.

[4] Learned counsel for the claimants states last year's income of the deceased should be considered while calculating the compensation instead of average income. He further states

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that if an opportunity is provided, the claimants will be in a position to establish the yearly income of the deceased, including split of the income i.e. income earned during the last year and recurring income.

[5] Since certain factual aspects need to be decided for which further evidence would be required to be adduced, without expressing any opinion on the merits of the case, the issue only with regard to quantum of compensation is remitted back to the Tribunal to decide afresh after providing opportunity to the parties to adduce fresh evidence in support of their claims.

[6] The parties are directed to appear before the Tribunal on 13.05.2019.

[7] Both the appeals are disposed of, accordingly.

**[AVNEESH JHINGAN]**
**JUDGE**

**March 27, 2019**
*pankaj baweja*

1. Whether speaking/ reasoned : Yes
2. Whether reportable : No

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