IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 978 of 2015
Date of decision:- <u>25.02.2019</u>

Oriental Insurance Co. Ltd.

---Appellant.

Versus

Beant Kaur and Others

---Respondents.

<u>CORAM: HON'BLE Mr. JUSTICE AVNEESH JHINGAN</u>

Present:- Mr. S. S. Sidhu, Advocate,
for the appellant.

None for the respondent Nos. 1 to 3.

Ms. Sonia Pama, Advocate for
Mr. Perminder Singh, Advocate,
for respondent Nos. 4 and 5.

<u>AVNEESH JHINGAN J. (Oral)</u>

The award dated 21.08.2014 passed by Motor Accident Claims Tribunal, Kurukshetra (for short 'the Tribunal') has been assailed by the insurer of bus bearing Registeration No. HR-37B-8562 (hereinafter referred to as 'offending vehicle') being aggrieved of quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') on account of death of Tejender Mohan Singh.

The brief facts are that a motor vehicular accident took place on 15.07.2013, which proved fatal for Tejender Mohan Singh. The accident was caused due to the rash and negligent driving of the offending vehicle.

The widow and two minor children of Tejender Mohan Singh filed a claim petition under Section 166 of the Act. The Tribunal assessed the annual earning of the deceased as ₹3,45,598/- and awarded a sum of ₹ 54,09,000/- alongwith interest @7.5% per annum.

Learned counsel for the appellant contends that the accident took place in July 2013, the Tribunal relied upon the income tax returns filed for assessment years 2005-06 and 2006-07 and thereafter, adding ₹ 20,000/- for each year and arrived at figure of ₹ 3,45,598/- considering the said income the compensation was calculated.

None has appeared for the claimants inspite of service.

The contention raised by the learned counsel for the appellant deserves acceptance. The income tax returns relating to the financial year 2004-05 and 2005-06 cannot in itself form the basis to assess the income of the deceased for the financial year 2012-13. The pleading before the Tribunal was that the deceased was carrying on business and was an income tax assessee. If he had continued with his business there would have been returns for the later years also.

In such circumstances, the income assessed of the deceased by the Tribunal cannot be upheld. Without expressing any opinion on the merits of the case, the matter is remitted back to the Tribunal to decide the issue of the quantum of compensation afresh after providing opportunities to the parties concerned i.e. claimants and the insurer.

Needless to say that after assessing the annual income the compensation shall be calculated in accordance with law.

The claimants and the insurer of the offending vehicle are directed to appear before the Tribunal on 10.04.2019.

Disposed of, accordingly.

25.02.2019 **(AVNEESH JHINGAN)**
Riya Grover **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

Riya
2019.03.05 11:00