

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4368 of 2018 (O&M)

Date of Decision: 08.03.2019

Rambha Devi and another

.....Appellants

Versus

Lakhwinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Rajni Maurya, Advocate for
Mr. Naveen Batra, Advocate
for the appellants.

Mr. Amandeep Singh Tuteja, Advocate
for Insurance Company.

AVNEESH JHINGAN, J.(oral)

The present appeal is against award dated 17.1.2018 passed by the Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as 'the Tribunal') under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The appellants are widow and son of Lal Chand. Respondent No.1 is driver of the Xylo Car bearing registration No.PB-01-A-1880 (for short 'the offending vehicle') and respondents No. 2 & 3 are the owner and insurer (i.e. Oriental Insurance Company Limited) of the offending vehicle. Parents of the deceased have been arrayed as proforma respondents No. 4 and 5.

The facts are not disputed by the parties that a motor vehicular accident took place on 13.3.2017. The said accident proved fatal for Lal Chand, aged 42 years. The accident was caused due to rash and negligent driving of the offending vehicle. FIR No. 34 dated 14.3.2017 was registered

at Police Station Garhshankar.

In the claim petition filed, it was pleaded that he was a Mason. The claimants failed to prove the monthly earning of the deceased by producing any reliable evidence. However, AW2 Raj Kumar deposed before the Tribunal stating that the deceased was working as Mason with him and he was paying ₹ 15,000/- per month to deceased. He failed to produce any evidence with regard to payment being made to him. The Tribunal considered the deceased to be an unskilled labourer and assessed monthly income as ₹ 8000/-, 25% future prospects was awarded, 1/4th deduction for self-expenses was made as the deceased was survived by four dependants and multiplier of 14 was applied as deceased was 42 years of age. A sum of ₹ 13,30,000/- was awarded as compensation along with interest at the rate of 7.5% per annum. The amount awarded included ₹ 70,000/- under conventional heads.

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

Leraned counsel for the appellants contends that the deceased was a Mason and the Tribunal erred in considering him as an unskilled labourer.

Learned counsel for the insurer argued that the claimants failed to prove the monthly earning and occupation of the deceased and the Tribunal has rightly assessed the monthly earning as ₹ 8000/- per month.

In the claim petition it was pleaded that the deceased was working as Mason. AW2 Raj Kumar made a deposition before the Tribunal that the deceased was working with him as a Mason though he failed to produce any document to substantiate the fact that he was paying ₹ 15,000/-

per month. The said evidence was not rebutted by respondents. In such

circumstances, it would be appropriate to consider the deceased as semi-skilled labourer and relying upon the minimum wages prevalent in the State at the time of accident, his monthly income is assessed as ₹ 8400/-. The compensation is re-calculated considering his monthly income as ₹ 8400/-.

Sr. No.	Particulars	Amount awarded
1.	Monthly income	₹ 8400/-
2.	25% future prospects	₹ 2100/-
3.	1/4 th deduction for self-expenses	₹ 2625/-
4.	Applying multiplier of 14 (7875x12x14)	₹ 13,23,000/-
5.	Conventional heads	₹ 70,000/-
6.	Total	₹ 13,93,000/-

The award dated 17.1.2018 is modified to the extent that amount awarded of ₹13,30,000/- by the Tribunal is enhanced to ₹ 13,93,000/-

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

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

08.03.2019

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Whether speaking/reasoned Yes
Whether Reportable: Yes