

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4531 of 2018

DATE OF DECISION: JANUARY 23, 2019

BABITA AND ANR

.....APPELLANTS

VERSUS

BHAGAT SINGH & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Surinder Singh Virk, Advocate
for the appellants.

Mr. Punit Jain, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J (ORAL)

The award dated 02.02.2018 passed by the Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal') has been assailed by the legal heirs of Manjeet seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

Appellants are the parents of the deceased. The driver, owner and insurer (i.e. The Cholamandlam General Insurance Company Ltd.) of truck bearing registration No. HR-69-B-3776 (hereinafter referred to as the 'offending vehicle') have been arrayed as respondents No. 1 to 3 respectively in the appeal. The brother of the deceased has been arrayed as proforma respondent.

The facts emanating from the record are that on 03.11.2014,

on a motorcycle bearing registration No. HR-06-N-9674. The motorcycle was being driven by Manjeet. On their way the motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact both the riders of the motorcycle fell down and sustained multiple grievous injuries. They were shifted to Prem Hospital, Panipat from where Manjeet was taken to Maharaja Agarsain Hospital, Panipat from where he was taken to PGIMS, Rohtak and then to Oscar Hospital, Rohtak. Again he was admitted in PGIMS, Rohtak where he died on 19.11.2014. FIR No. 485, dated 19.11.2014 was registered at Police Station Madlauda, District Panipat.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

In the claim petition, it was pleaded that the deceased was 22 years old at the time of accident and was a refrigerator & air conditioner mechanic and earning ₹10,000/- per month. The claimants produced a provisional certificate issued by Government Industrial Training Institute, Sonapat to the effect that the deceased was a trained mechanic of refrigerator and air conditioner. But the claimants failed to substantiate the monthly earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹5500/- per month treating him to be an unskilled labourer; 1/2 deduction was made for self-expenses and a multiplier of 18 was applied. 40% future prospects were awarded. ₹30,000/- was awarded under the conventional heads. The Tribunal awarded a sum of ₹10,49,030/- along with interest at the rate of 7.5% per annum. The amount awarded included

₹1,87,430/- for medical expenses incurred on the treatment.

Heard learned counsel for the parties, perused the paper book and relevant record.

Learned counsel for the appellants contends that the deceased was a trained mechanic of refrigerator and air conditioner and was earning ₹10,000/- per month. He further contends that though the provisional certificate issued by the Principal, Govt. Industrial Training Institute, Sonapat was produced before the Tribunal yet the Tribunal treated the deceased with an unskilled labourer.

Learned counsel for the insurer defends the award and argues that though provisional certificate was produced before the Tribunal but the same was not proved. Hence, the Tribunal rightly considered the deceased as an unskilled labourer.

There is no dispute between the parties with regard to the age of the deceased, future prospects, deduction made for self-expenses, multiplier applied and the amounts awarded under the conventional heads. The only dispute is with regard to the income assessed.

The contention raised by learned counsel for the appellants deserves acceptance.

From the provisional certificate, it is evident that the same has been issued by the Principal, Govt. Industrial Training Institute, Sonapat and it certified that the deceased was a trained mechanic. In such circumstances, it would not be appropriate to equate the deceased with an unskilled labourer. The claimants failed to substantiate the occupation and earning of the deceased, in such cases, the safest yardstick would be to rely upon the minimum wages prevalent in the State at the time of accident. The minimum

wages at the time of accident in the State of Haryana for a skilled labourer was ₹6100/-.

In view of afore-said discussion, the compensation is re-calculated as under:

	Head	Compensation awarded
(i)	Income	₹ 6100/- per month
(ii)	Future prospects at 40%	₹ 2440/- per month
(iii)	Total Income	₹ 8540/- per month
(iv)	Deduction of personal expenses	₹4270/- (i.e. 1/2 of total income as already made by the Tribunal)
(v)	Multiplier	18
(vi)	Loss of income	4270x12x18= ₹9,22,320/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Medical Expenses	₹ 1,87,430/- as already awarded by the Tribunal.
	Total Compensation awarded	₹11,39,750/-

The award dated 02.02.2018 is modified to the extent that amount of ₹10,49,030/- awarded by the Tribunal is enhanced to ₹11,39,750/-. The appellant(s) shall be entitled to the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is partly allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

JANUARY 23, 2019
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Whether speaking/reasoned: *Yes / No*
Whether reportable : *Yes / No*