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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.4915 of 2018
Date of Decision : 02.04.2019

Rajbala and others

Appellants

Versus

Rajesh Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vishal Yadav, Advocate
for the appellants.

Mr. Amit Kundra, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 06.03.2018 passed by the Motor Accident Claims Tribunal, Rohtak [for brevity 'the Tribunal'] has been assailed by the widow and children of Yaspal (deceased). The only challenge in the present appeal is with regard to the monthly income of the deceased assessed by the Tribunal as ₹7,500/-.

The driver, owner and insurer (i.e. The New India Assurance Company Ltd.) of Santro Car bearing registration No. HR-13D-6665 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts with regard to accident are not disputed by the parties. A motor vehicular accident took place on 24.04.2017 and the same proved fatal for Yashpal, aged 58 years. 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 the compensation.

In the claim proceedings under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'], it was claimed that the deceased was running a shop of grocery items and was earning ₹20,000/- per month. The claimants failed to prove monthly earning of the deceased. The Tribunal assessed monthly income of the deceased as ₹7,500/- considering him with an unskilled labourer; 10% future prospects were awarded; 1/3rd deduction for self-expenses was made and multiplier of '9' was applied. The Tribunal awarded ₹6,64,000/- alongwith interest @ 9% per annum. The amount awarded included ₹70,000/- under the conventional heads.

Learned counsel for the appellants contends that the deceased was a shop keeper, the Tribunal erred in equating him with an unskilled labourer. The grievance raised is that income of the deceased assessed by the Tribunal is even less than minimum wages prevalent in the State at the time of accident.

Learned counsel for the insurer while defending the income assessed by the Tribunal argues that the claimants failed to prove occupation and earning of the deceased.

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

The claimants failed to prove monthly income of the deceased but Ledger Book (Ex. P-3) was produced before the Tribunal showing the accounts of the shop being maintained, in such circumstances, it would not be appropriate to equate him with an unskilled labourer.

In order to arrive at just and equitable compensation, the income of the deceased is assessed as ₹8,400/- per month. As there is no dispute with regard to future prospects, multiplier applied, deduction made for self-expenses and amounts awarded under the conventional heads, the compensation is re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	8,400/-
10 % Future Prospects	840/-
Sub Total	9,240/-
1/3rd deduction for self expenses	3,080/-
Monthly Dependency	6,160/-
Annual Dependency	73,920/-
Applying multiplier of '9'	**6,65,280/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**40,000/-**
Grand Total	**7,35,280/-**

The award dated 06.03.2018 is modified to the extent that amount of ₹6,64,000/- awarded by the Tribunal is enhanced to ₹7,35,280/-.

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

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

April 02, 2019
pankaj baweja

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