IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5618 of 2018 (O&M)

Date of Decision: 27.03.2019

Sonia Devi and others

.......Appellants

Versus

Kamal Kumar and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Bhag Singh, Advocate
for the appellants.

AVNEESH JHINGAN, J.(oral)

The award dated 6.4.2018 passed by the Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') has been assailed by the legal heirs of Jasvir Singh seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

Respondents are the driver of bus bearing registration No.HR-39-D-2599 (for short 'the offending vehicle'), owner, i.e Haryana Roadways, State of Haryana and insurer (i.e. The Oriental Insurance Company Ltd) of the offending vehicle.

The facts are summarised below:

On 24.10.2016 Jasvir Singh was riding a motor cycle bearing registration No.HR-78-2136. On his way the motor cycle was struck by the offending vehicle from behind, as a result of the impact, he fell down and was crushed by the bus, he died at the spot. FIR No. 98 dated 24.10.2016 was registered at Police Station Naggal.

In the claim petition it was pleaded that the deceased was 28 years of age and was working as Halwai. His earning was claimed to be ₹ 30,000/- per month. In order to prove the earning, the widow of the deceased deposed before the Tribunal as PW1 wherein she stated that her husband was a skilled Halwai and was earning ₹ 30,000/- by working as Halwai and running diary business. No other evidence was produced with regard to his occupation. One Malkit Singh PW2 appeared as a witness and stated that the deceased was working as Halwai under him and he was being paid ₹ 30,000/- per month. He failed to furnish any documentary proof with regard to payment being made to the deceased. The evidence was not found worth reliance as there was no proof with regard to payment made to the deceased. Moreover, nothing was produced to show the capacity of Malkit Singh to pay the claimed salary to the deceased. In absence of any worth reliance evidence, the Tribunal relied upon the minimum wages and assessed the monthly earning as ₹ 8070/-, 40% future prospects were awarded, $1/4^{th}$ deduction for self expenses was made as deceased was survived by five dependants and multiplier of 17 was applied. The Tribunal awarded a sum of ₹ 17,98,600/- alongwith interest at the rate of 7.5% per annum. The amount awarded included ₹ 70,000/- under conventional heads.

Heard learned counsel for the appellants and perused the relevant documents produced by him.

Learned counsel for the appellants contends that the income assessed by the Tribunal is on lower side as the deceased was a skilled Halwai and was earning ₹ 30,000/- per month.

The contention raised is not well founded. The claimants have failed to substantiate the earning of the deceased. The person, who deposed before the Tribunal that he is paying ₹ 30,000/- as salary to the deceased had not produced any documentary evidence to the said fact. In cases where the claimants have failed to prove the monthly earning of the deceased, one of the safest yardstick is to reply upon the minimum wages prevalant in the State at the relevant time and the Tribunal has done so.

No interference is called for in the income assessed by the Tribunal. The multiplier applied, deduction made and the amount awarded under conventional heads are in consonance with the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

There is no scope for further enhancement.

The appeal is accordingly dismissed.

(AVNEESH JHINGAN)
JUDGE

27.03.2019
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No