IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5844 of 2018 (O&M)
Date of decision: 11.4.2019

Renu and others

.. Appellants

v.

Anil Kumar Shukla and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

...

AVNEESH JHINGAN, J. (Oral)

The award dated 7.2.2018 passed by the Motor Accident Claims Tribunal, Gurugram (for short, 'the Tribunal') has been assailed by the legal representatives of Ram Hamesh (deceased), seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

Respondents are the driver, owner and insurer (i.e. ICCI Lombard General Insurance Company Ltd.) of tractor bearing registration No. UP-78-CT-3654 (for short, 'the offending vehicle').

The facts are summarized below:

On 28.4.2016, Ram Hamesh along with his friend Ved Parkash was travelling in Car bearing registration No. HR-26-BH-9257. On their way, the car was struck by the offending vehicle, due to the impact, Ram Hamesh sustained injuries and on the same day he succumbed to the injuries. FIR No. 185 dated 29.4.2016 was registered at Police Station

Panki, Kanpur City.

In the claim petition, it was pleaded that the deceased was 40 years old and was running a shop. His earning was claimed as ₹30,000/- per month. In order to prove the occupation and earning of the deceased, only the deposition of the widow was there and one income-tax return for the assessment year 2008-09 was exhibited. The claimants failed to prove the occupation and earning of the deceased. The Tribunal assessed the monthly earning as ₹8,000/-, 40% future prospects were awarded, 1/3rd deduction for self expenses was made and multiplier of 15 was applied. The Tribunal awarded a sum of ₹15,14,060/-, which was rounded off to ₹15,14,500/- along with interest @ 7.5% per annum. The amount awarded included 70,000/- under the conventional heads and ₹1,00,000/- for loss of love and affection.

The Tribunal considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and the insurer were held jointly and severally liable to pay the compensation.

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

The only grievance raised by learned counsel for the appellants is that the income assessed by the Tribunal is on the lower side.

It was claimed that the deceased was running a shop and was earning ₹30,000/- per month, the claimants failed to adduce any evidence to support their claim. Nothing was brought on record even to show that the shop being run was owned by him or was on rent. Neither any account books nor any other iota of evidence was produced to substantiate the monthly income of the deceased. The income tax return produced was for the assessment year 2008-09, whereas the accident took place on 28.4.2016. Return filed was eight years old.

From a perusal of the return, it is evident that in the said year the return was filed claiming that there was income from business and profession from which a net profit of ₹1,08,540/- was earned. Learned counsel for the appellants has not been able to dispute that thereafter no return was filed atleast not produced. Failure of filing of the return coupled with the fact that nothing was produced to show that at the relevant time the deceased was still carrying on the business, there was no occasion for the Tribunal to accept the same for the purpose of assessing the earning of the deceased. Where the monthly earning of the deceased is not proved, in such circumstances, one of the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of accident to grant compensation.

Considering the minimum wages prevalent in the State of Haryana at the time of accident, no interference is called for in the income assessed by the Tribunal.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

11.4.2019
mk

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No