IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 6151 of 2018

Date of Decision: 01.04.2019

Smt. Kiran Devi and others

.......Appellants

Versus

Jahul Huk and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

<u>AVNEESH JHINGAN, J.(oral)</u>

The award dated 4.1.2018 passed by the Motor Accident Claims Tribunal, (IV), Rewari (hereinafter referred to as 'the Tribunal') has been assailed by the legal heirs of Arjun Singh seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The facts in brief are that on 20.2.2014, Arjun Singh (deceased) was riding a motor cycle bearing registration No.HR-26-W-4131. When he reached near Toll Plaza near Police Post Biranwas on Rewari-Kotkasim Road, the motor cycle was hit by a Trolla bearing registration No. RJ-14-GE-0482 (for short 'the offending vehicle'). As a result of the impact, Arjun Singh sustained grievous injuries which proved fatal. FIR No. 73 of 2014 was registered at Police Station Kotkasim.

In the claim petition filed it was pleaded that the deceased was 45 years of age and was earning ₹ 30,000/- per month by doing business of carriage/transportation in the name and style of Om Sai Ram Traders at

Bhiwadi District Alwar and also doing agricultural work.

The claimants produced the income tax return Ex.PW4/A whereby the annual income shown was ₹ 2,05,384/-. The said return was not accepted. The Tribunal assessed the monthly earning of the deceased as ₹ 10,000/- , 25% future prospects were awarded, 1/4th deduction for self expenses were made as the deceased was survived by four dependants and a multiplier of 14 was applied. The Tribunal awarded a sum of ₹ 16,45,000/- along with interest at the rate of 9% per annum. The amount awarded included ₹ 70,000/- under conventional heads.

The only challenge in the present appeal is that the Tribunal erred in not relying upon the income tax return and erred in assessing the monthly earning as ₹ 10,000/-.

The contention raised is not well founded. The Tribunal has given reasons for not accepting the income tax return Ex.PW4/A The relevant portion of the award is reproduced below:

> "18. However, there is force in the another contention advanced by learned counsel for the insurance company when it argued that the income of deceased to the tune of ₹ 2,05,384/- per year as shown in the Income Tax Return (for short ITR) Ex.PW4/1 should not be taken into consideration for assessing the compensation of the petitioners. The said contention is liable to be accepted for more than one reasons. Firstly the said ITR was filled after more than one and half year of the demise of the deceased in this accident. Secondly, no supporting evidence as to the said inicome could be proved and produced in the deposition of PW4 Rambabu Yadav, Senior Taxation Assistant, Income tax Office, Alwar. Thirdly, the deceased during his

> lifetime never filed any ITR and he died within one year of registration of his firm. As per registration certificates Ex.P7 and Ex.P8 of M/s Om Sai Ram Traders, the deceased was the sole proprietor doing the business of furnace, foundry, fire bricks, fire cement etc. The said firm was registered on 30th April 2013, whereas the deceased met his cruel end on 20.2.2014. The statement of account of the said firm Ex.P9 would not give any indication that annual income of the deceased was ₹ 2,05,384/-. The said account shows the various transactions entered into on behalf of the said firm from 21.5.2013 upto 3.3.2014. The said account was opened on 26.3.2013. The said account does not reflect the profits accruing to the said firm."

It is forth coming that the deceased was 45 years of age at the time of accident and apart from one income tax return he has not filed any income tax return prior to that. Apart from the said return which was filed after the death of the deceased, no other supporting evidence has been produced to substantiate the income shown in the return. The claim of the claimants that the deceased was doing business in the name and style of Om Sai Ram Traders at Bhiwadi is also of no help in assessing the income of the deceased as the firm was registered in April 2013 and there was no worth reliance document produced to establish the earning of the deceased from the said firm. The Tribunal considering the facts in entirety including the fact that the deceased was carrying on a business assessed the annual income as ₹ 1,20,000/- which is appropriate.

No case is made out for interference in the findings of the Tribunal.

The appeal is accordingly dismissed.

(AVNEESH JHINGAN)
JUDGE

01.04.2019
reema

Whether speaking/reasoned Yes
Whether Reportable: Yes