

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**FAO 1317 of 1997 (O&M)**

**Date of Decision: February 07, 2020**

Prem Devi and others ...Appellants  
Versus  
Jai Bhagwan and others ... Respondents

**CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present : Mr. Shamsheer Singh Mor, Advocate  
for the appellants.

None for respondent No.1.

Mr. Kulvir Narwal, Advocate  
for respondents No. 2 to 5.

**FATEH DEEP SINGH, J. (Oral)**

The brief facts which led to the filing of the present  
appeal are as follows:-

“Shanti Devi and others instituted against Jai  
Bhagwan and others a claim petition under Section  
166 of the Motor Vehicle Act (in short, **the Act**).

The grounds of this claim were that one Ram  
Narain on the fateful day on 30.01.1994 was sitting

on the katcha portion of the road in front of a shop while his companion Ran Narain was getting the tyre of his cart filled with air when a Maruti Car bearing registration No. DDD/5066 (in short, '**the offending car**') came being driven rashly and negligently at a high speed by Jai Bhagwan and struck against the deceased resulting in his death on 2<sup>nd</sup> February 1994 while under hospitalization. Widow Shanti Devi, minor sons Jaibir and Neeraj and aged mother Phulo Devi @ Phulwati claiming to be dependents upon deceased sought compensation from the owner of the offending car. It is alleged that the deceased at the time of death was aged around 27 years carrying on agricultural pursuits earning handsomely on which all the claimants were dependents. The learned Tribunal proceeded *ex-parte* against the driver of the offending car and while its owner-Rishi Pal

respondent No.2 had died, his legal heirs were brought on record comprising Prem Devi-mother, Kamlesh Devi-widow, Rup and Basant sons and Panka daughter and all these legal heirs have filed the present appeal.

Heard Mr. Shamsheer Singh Mor, Advocate for the appellants and Mr. Kulvir Narwal, Advocate for respondents No. 2 to 5 and perused the records.

Appreciating the submissions, the contesting respondents in their written reply have admitted the factum of accident and the ownership of the vehicle but denied that it was being driven rashly and negligently. On the basis of evidence of PW1 Shanti Devi and PW2 Mahabir Singh, eye witness of the accident and based on the documents postmortem report Ex.P2 and school leaving certificate of Ram Narain Ex.P3, the Tribunal passed the award as respondents did not lead any evidence and thereby awarding a sum of Rs.2,20,000/- to the petitioners for which the respondents were liable to pay jointly and

severally alongwith interest at the rate of 12% per annum. Further, considering the the fact that the wife of deceased Smt. Shanti Devi was worst sufferer and had the liabilities to bring up the two minor children, the Tribunal, made the apportionment of the aforesaid awarded amount and awarded Rs. 60,000/- to Shanti Devi widow, Rs. 70,000/- each to minor sons Jaibir and Neeraj and Rs.20,000/- to Smt. Phulo mother of the deceased.

It is not controverted by the counsel for the appellant that the respondents have not led any evidence to controvert the evidence of the claimants and, thus, testimonies of PW1 and PW2 have remained totally unrebutted. In the light of the principle of evidence, such a uncontroverted evidence needs to be taken on the face of it keeping the age of the deceased, the learned Tribunal considered the number of the dependents, who are minor children, widow of the deceased and his aged mother has drawn conclusion that the deceased by all means from his livelihood must be earning Rs.1,600/- per month and after

deducting the amount to be spent by the deceased on his own upkeep and maintenance has rightly awarded Rs.1,200/- to be the dependency per month of the claimants and considering the age has rightly applied multiplier of 15.

Counsel for the appellant could not displace how there has been wrong application of the multiplier or incorrect calculation in assessing the income of the deceased and dependency upon him of all the claimants.

The amount awarded cannot by any means be termed on the higher side and rather appears to be just and equitable and so the rate of interest at the time when the award was passed is well justified as per the then prevalent banking and rate of interest. It is the own stand of the contesting respondent that Jai Bhagwan was driver and Rishi Pal was owner and, therefore, the compensation so awarded has been rightly done so and in the absence of any evidence led by the contesting respondents to rebut the stand of the claimants, this Court does not feel inclined to show any indulgence and, thus,

the findings of the Tribunal needs to be upheld.

The appeal being devoid of any merits stands dismissed.

February 07, 2020  
amit rana

(FATEH DEEP SINGH)  
JUDGE

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