

**FAO No. 4821 of 2002 and
XOBJC No.196-CII of 2014**

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

**FAO No. 4821 of 2002 and
XOBJC No. 196-CII of 2014
Date of Decision:- 13.05.2015**

Suman Lata and others

.....Appellants

Versus

Ram Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Atul Gaur, Advocate
for Mr. Sameer Rathore, Advocate
for the appellants.

Mr. S.K. Arya, Advocate
for respondent No.1.

Mr. J.S. Cooner, Advocate
for cross-objector/respondent No.2.

Mr. Paul S. Saini, Advocate
for respondent No.3.

SHEKHER DHAWAN, J.

F.A.O. No. 4821 of 2002

The present appeal filed by appellants-claimants and cross
objection filed by owner of the offending vehicle i.e. No. HR-37-9694.

2. Relevant facts that Ram Pal Singh, aged about 40 years, met with motor accident on 03.11.2000, while he was going on scooter No.HR-03C-7186. Three wheeler bearing registration No.HR-37-969, which was being driven by respondent No.1 in rash and negligent manner came from opposite side and struck against the scooter by going to the wrong side of the road. Ram Pal Singh sustained grievous injuries and was taken to P.G.I., Chandigarh, where he died on 04.11.2000. Claimants claimed compensation to the tune of ₹20 lacs. Respondents contested the claim petition on all accounts. 'The Tribunal' after appreciating the evidence, passed award of ₹3,10,000/-, making the insurance company liable to make the payment of award at the first instance and insurance company also given rights to recover the amount from owner of the offending vehicle. Being aggrieved by quantum of compensation awarded by 'The Tribunal', the claimants are in appeal and owner of offending vehicle has filed a cross objection petition against the recovery rights.

3. Mr. Atul Gaur, Advocate for Mr. Sameer Rathore, Advocate, learned counsel for the appellant took the plea that Ram Pal Singh was of the age of 40 years and working as security guard. He was getting salary of ₹2,500/- per month. Apart from that, he was getting family pension of ₹2,500/-. 'The Tribunal' has not added the amount of pension income in his income, while determining the amount of compensation. Apart from that, 'The Tribunal' has not awarded the minimum amount on account of consortium though one of the claimant is widow of Ram Pal Singh and

funeral expenses and love and affection to the minor children and father of the deceased.

4. Mr. Paul S. Saini, learned counsel for respondent No.3 took the plea that the claimants have been awarded sufficient amount of compensation and the same are not liable for any further enhancement.

5. Having considered the rival contentions, this Court is of the considered view that it had come in the evidence that Ram Pal Singh was getting pension of ₹2,500/- per month, as he retired from Army but 'The Tribunal' has not computed the same amount while computing income of the deceased. Certainly pension income of ₹25,00/- was to be added by computing the total income of the deceased but it is also to be considered that after death of Ram Pal Singh his widow Smt. Suman Lata shall be getting pension to the extent of ½. As such, 50% of the pension amount was to be added while computing the income of the deceased and compensation awarded by 'The Tribunal' is required to be reassessed. The Tribunal has not awarded minimum amount, as per ratio of judgment by Hon'ble Apex Court in case **Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54**, on account of consortium though one of the claimant is widow, funeral expenses of ₹25,000/- have not awarded. Nothing has been awarded on account of love and affection to the minor children. Accordingly the amount of compensation is reassessed as under:-

Monthly income ₹2,500/- + half of pension of ₹2,500/-	₹2,500 + ₹1,250 = ₹3,750
Annual income	₹3,750 x 12 = ₹45,000
Less 1/3 rd as number of claimants are six	₹45,000 - ₹7,500 = ₹37,500
After applying multiplier of 15	₹37,500/- x 15 = ₹5,62,500
Add consortium as one of the claimant is widow	₹1,00,000
Loss on account of funeral expenses	₹25,000
Loss on account of love and affection for three minor children	₹1,50,000
Loss on account of love and affection for father of the deceased	₹50,000
Total compensation amount	₹8,87,500
Already awarded amount by the Tribunal	₹3,10,000
Enhanced amount = ₹5,77,000	₹8,87,500 - ₹3,10,000

6. The enhanced amount of compensation shall be payable from the date of claim petition, within 45 days from today, failing which, the appellant-claimant shall be entitled to receive interest @ 7.5% per annum from today.

Cross objection

Mr. J.S. Cooner, learned counsel for cross-objector has taken the plea that 'The Tribunal' has fell in error while giving the recovery rights to the insurance company although the original record of driving licence was not received. 'The Tribunal' has already tendered in evidence report (Ex.R2). As per said report, DL No.C-4597/Ag/86 dated 18.07.1986 was found to be fake. 'The Tribunal' has rightly returned the finding that the said evidence adduced by respondent No.3 was not rebutted and as the person driving the vehicle is without the valid licence. It was clear cut case of breach of insurance policy. The insurance company is not liable to pay the amount of compensation but as per law

laid down by Hon'ble Supreme Court in case National Insurance Company Vs. Swarn Singh, 2003(3) LJR 826 SC, the insurance company is liable to make the payment of claim petition at the first instance and thereafter recover the said amount. As such, recovery rights were given. The said finding recorded by 'The Tribunal', do not call for any interference and the same are hereby confirmed and cross objection filed owner of offending vehicle stands dismissed.

Resultantly the appeal is partly accepted and amount of compensation enhanced by ₹5,77,000/- and cross objection filed by owner of offending vehicle stands dismissed.

May 13, 2015
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(SHEKHER DHAWAN)
JUDGE