

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

1. F.A.O No. 1311 of 2014

New India Assurance Co. Ltd

...Appellant

Versus

Urmila and others

...Respondents

2. F.A.O No. 5519 of 2014

Urmila and others

...Appellants

Versus

Karnail Singh and others

...Respondents

Date of decision:- 03.09.2015

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vinod Gupta, Advocate
for the appellant in FAO No. 133 of 2014

Mr. Naresh Kaushik, Advocate
for respondent Nos. 1 to 3 in FAO No. 1311 of 2014
and for the appellants in FAO No. 5519 of 2014.

Mr. Ajay Sharma , DAG, Haryana
for respondent Nos. 4 and 5 in FAO No. 1311 of 2014.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

1. Two appeals, as noticed above, are being disposed of by
this common judgment, having arisen out of the impugned Award

GAURAV ARORA
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I attest to the accuracy and
integrity of this document

dated 16.01.2014 passed by the learned Motor Accident Claims Tribunal, Panchkula.

2. The facts which are not in dispute are that on 30.11.2002, Ashok Kumar, died in a road accident, due to rash and negligent driving of Karnail Singh of bus bearing registration No. HR-68-A-9987 belonging to State of Haryana and owned by General Manager, Haryana Roadways, Chandigarh depot and another insured with the New India Insurance Co. F.I.R was registered in this regard against respondent No. 1

3. The learned counsel for the appellant-Insurance Company contends that the claimants have already taken the compensation under the ESI and thus, the claim petition filed by the claimants under the Motor Vehicle Act is not maintainable. Once the compensation has been taken under one Act, then no compensation can be claimed under the Motor Vehicle Act and the learned Tribunal has wrongly followed and wrongly interpreted Section 53 of the Employee State Insurance Act, which is not applicable to the facts of the present case.

4. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced.

6. I have heard learned counsel for the parties and perused the record.

COMPENSATION AWARDED BY MACT

Sr. No.	Heads	Calculations
(i)	Salary	Rs.6250/- per month
(ii)	1/3 th of (i) deducted as personal expenses of the deceased=	Rs.6250-Rs.2083=Rs.4167 per month
(iii)	Compensation after multiplier of 15 is applied	Rs.4167 X 12 X 15= Rs.7,50,060/-
(iv)	Loss of consortium to wife	Rs.1,00,000/-
(v)	Loss of love and affection to minor children	Rs.25,000/-
(vi)	Funeral charges	Rs.25,000/-
	Total Compensation awarded	Rs.9,00,000/-

7. As far as the appeal preferred by the insurance company is concerned, it is not in dispute that the offending vehicle was fully insured from the appellant-company. Ex.RA is the photocopy of the driving licence possessed by the driver at the time of the accident. Its genuineness is also not under challenge. The only question which requires determination is as to whether the learned Tribunal has fell in error by awarding the compensation to the claimants unde the Motor Vehicle Act, as they had already taken the compensation under the ESI

8. Reference at this stage can be made to a statement of Mitlesh Kathpalia, Manager of M/s Devi Graphics where the deceased was working. In his statement, he stated that the deceased was drawing a salary of Rs.7000/- per months besides he was getting

Rs.100/- per hour as over time. The deceased was enrolled with ESIC through his employer and his insurance enrolment No. was 2412623828. He has proved the salary certificate as Ex P5 and copies of letters issued by ESIC as Mark A to Mark C

Further Vinay Sirivastava being Assistant in ESIC, Ambala Cannt while appearing as P.W.5 has admitted that the deceased was enrolled with ESIC through his employer and his insurance enrollment No. was 2412623828. In his cross examination, he admitted that the department of ESIC has fixed the pension payable to the legal heirs of the deceased on the basis of contribution made for the last six months prior to his death. He stated that the deceased was drawing wages of Rs.4700/- per month and in the month of January, February and March, 2012, the deceased was getting wages of Rs.5000/- per month but there is a difference between salary and wages. At last, he stated that the legal heirs of the deceased are geing family pension from ESIC @ 4497/- per month.

The argument raised by learned counsel for the Insurance Company is liable to be rejected, in view of the judgment of Hon'ble the Supreme Court in a case of ***Regional Director, ESI Corporation vs. Francis De Costa, 1996(4) S.C.T 228*** wherein it was held that the injury caused in the road accident, while employee was on his way to

his place of employment has no origin in his employment in the factory. It is emphasized that the employment of the worker does not commence till he has reached the place of employment. Reference can be made to Section 2(8) of the Employees State Insurance Act, 1948:-

“(8) “employment injury” means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.”

In the present case, as per evidence available on record in the form of P.W.2 and P.W.3, the deceased was paddling his bicycle and was going to his place of work on 30.11.2012. Thus, the Tribunal has rightly awarded the compensation to the claimants, as mentioned above. Thus, the case of the claimants is covered by Section 2(8) of ESI Act.

9. As far, preferred by the claimants for enhancement of the amount of compensation, is concerned, while assessing the compensation, future prospects have not been given by the Tribunal.

10. Reference at this stage can be made to a judgment of

Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54

whereby 50% future prospect has been given and thus is liable to be added in the present case as well . However, the multiplier of 15 has been rightly applied, in view of **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77.**

Further, loss of estate has also to be given to the claimants, in view of the judgment of Hon'ble the Supreme Court in cases of **Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520 and Kalpanaraj and others v. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193.**

RE-ASSESSED COMPENSATION

11. Following the ratio of law laid down by Hon'ble the Supreme Court, the compensation has to be re-assessed as follows:-

Sr. No.	Heads	Calculations
(i)	Salary	Rs.6250/- per month
(ii)	50% of (i) above to be added as future prospects=	Rs.6250+Rs.3125=Rs.9375/- per month
(iii)	1/3 th of (ii) deducted as personal expenses of the deceased=	Rs.9375-Rs.3125=Rs.6250 per month
(iv)	Compensation after multiplier of 15 is applied	Rs.6250 X 12 X 15= Rs.11,25,000/-
(v)	Loss of consortium to wife	Rs.1,00,000/-
(vi)	Loss of estate	Rs.1,00,000/-
(vii)	Loss of love and affection to two minor children	Rs.1,00,000/- each
(viii)	Funeral charges	Rs.25,000/-
(ix)	Total Compensation awarded	15,50,000/-
	Enhanced amount of compensation	Rs.15,50,000-Rs.9,00,000=Rs.6,50,000/-

12. Resultantly, the enhanced amount of compensation of Rs.6,50,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015 (1) SCC 539***. Remaining conditions of disbursal of amount shall remain unaltered.

12. With the aforesaid modification in the impugned award, the appeal preferred by the claimants (FAO No. 5519 of 2014) is allowed to the above extent and the appeal preferred by the Insurance Company (FAO No. 1311 of 2014) stands dismissed, being devoid of merit.

03.09.2015

G Arora

(**RITU BAHRI**)
JUDGE