

205.

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

FAO No.2845 of 2010 (O&M)

Date of decision:12.04.2016

Oriental Insurance Company Limited

... Appellant

versus

Angoori Devi and others

.... Respondents

II. FAO No.851 of 2011 (O&M)

Angoori Devi and others

... Appellants

versus

Vinod Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Lalit Garg, Advocate,
for the appellant in FAO No.2845 of 2010 and
for respondent No.3 in FAO No.851 of 2011.

Mr.Balkar Singh, Advocate,
for the appellants in FAO No.851 of 2011 and
for respondents 1 to 3 in FAO No.2845 of 2010.

Ms. Sarika Gupta, Advocate,
for respondents 4 and 5 in FAO No.2845 of 2010 and
for respondents 1 and 2 in FAO No.851 of 2011.

K.Kannan, J. (Oral)

1. Both appeals are connected and the appeal in FAO
No.2845 of 2010 is at the instance of the insurer seeking for

recovery rights against the owner and driver and the appeal in FAO No.851 of 2011 is at the instance of the claimants seeking for enhancement of compensation.

2. The deceased was said to be an Assistant in Pharmaceutical firm and earning around ₹8,000/- per month. He was also said to possess agricultural lands of about 10 kanals and out of which, he was said to be earning ₹2,500/- per month. There was no proof of his employment in pharmaceutical firm except some copy of the bills prepared by the deceased himself and of travelling undertaken in two months before his death. The existence of agricultural land was proved and the court therefore took the average income of the deceased at ₹5,000/- and assessed a compensation of ₹5,50,000/-. With a poor quality of evidence regarding employment status and the income, I will not find any scope for any further enhancement and retain the income at ₹5,000/-, provide for a 1/3rd deduction and apply a multiplier of 13 to assess the loss of dependency at ₹5,20,000/-. I will provide for ₹1 lakh towards loss of consortium and ₹50,000/- towards loss of love and affection for both son and daughter who were majors. The various heads of claims are tabulated as under:-

Accident	06.09.2008		
Age	48		
Occupation	Pharmaceutical firm		
Claimants	Widow, major son and daughter		
	Heads of claim	Tribunal	High Court

<u>FAO No.2845 of 2010 (O&M)</u>			- 3 -
Sr. No.		Amount (₹)	Amount (₹)
1.	Income	5,000	5,000
2.	Add,% of increase 30%/50%		
3.	Deduction $\frac{1}{2}$, $\frac{1}{3}$, $\frac{1}{4}$, $\frac{1}{5}$		3,333.34
4.	Multiplicand		40,000
5.	Multiplier		13
6.	Loss of dependence		5,20,000
7.	Medical expenses		
8.	Loss of consortium		1,00,000
9.	Loss of love and affection		50,000
10.	Loss to estate		5,000
11.	Funeral expenses		25,000
	Total	5,50,000	7,00,000

There shall be an award of ₹7 lakhs and the additional amount of what has been already awarded by the Tribunal will attract interest at 7.5% from the date of petition till date of payment.

3. On an issue of liability which is taken by the insurer, the contention is the policy which was purchased by the owner for issuance of a cheque did not fructify and the cheque bounced on presentation. However, the notice of cancellation of the policy was given only subsequent to the accident and consequently, the third party cannot be in any way be affected by the bouncing of the cheque. The insurer will be competent however to recover the same from the insured, for, in terms of Section 64-VB of the Insurance Act, there is no duty to provide policy coverage unless the premium had been paid. If the premium remained unsatisfied by the bouncing of the cheque, the Insurance Company shall pay the compensation as determined and recover the same against the insured-owner of the vehicle. The award already passed is modified and the appeal in

FAO No.851 of 2011 is allowed on the above terms. The appeal by the insurer in FAO No.2845 of 2010 is also allowed subject to the right of recovery provided against the owner of the vehicle. The compensation will be split in the ratio of 2:1:1 amongst the widow, the major son and daughter. The amount of ₹25,000/- deposited at the time of preferring the appeal is ordered to be transmitted to the credit of the case before the Tribunal for payment to the claimants in discharge of liability under the award.

(K.KANNAN)
JUDGE

12.04.2016
sanjeev