

FAO No. 1185 of 2013

1

219

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

**FAO No. 1185 of 2013 (O&M)
Date of Decision : 09.09.2016**

The Oriental Insurance Company Ltd.

...Appellant

Versus

Smt. Balwinder Kaur and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.C. Gupta, Advocate for the appellant.

Mr. Salil Sagar, Advocate for the respondents.

Rekha Mittal, J.(Oral)

The present appeal has been directed against award dated 27.11.2012 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short 'the Tribunal'), whereby compensation has been awarded in favour of Smt. Balwinder Kaur and another in regard to death of Mange Ram in a motor vehicular accident on 13.07.2011.

Counsel for the appellant has assailed the award primarily on two grounds. The first submission made by counsel is that the FIR was lodged 8 days after the occurrence, sufficient to doubt the version brought forth by the claimants that the deceased died due to rash and negligent driving of the alleged offending vehicle by Sunil Kumar, its driver. In addition, it is submitted that even if the occurrence has taken place because

of negligence attributable to the offending vehicle as well, the present is a case of contributory negligence as the deceased was found smelling alcohol as per documents of the claimants i.e. mark R7 and mark C.

Counsel has challenged quantum of compensation by making two submissions. The first submission is that the Tribunal has assessed income of the deceased at ₹5400/- per month on the basis of minimum wage of an unskilled worker but the same was approximately ₹4500/- in July, 2011. As father of the deceased was not proved to be dependent upon his earning, permissible deduction should be $\frac{1}{3}$ rd in place of $\frac{1}{4}$ th.

Counsel for the contesting respondents/claimants has supported findings of the Tribunal on issue No. 1 that the occurrence took place due to sole rash and negligent driving of Qualis Jeep bearing No. PB-08AJ-7482 by its driver Sunil Kumar. With regard to quantum of compensation, he has submitted that compensation is liable to be enhanced under conventional heads.

I have heard counsel for the parties, perused the paper book, records of the Tribunal particularly the award.

To discharge the onus of issue No. 1, the respondents/claimants examined Smt. Balwinder Kaur, an eye witness to the occurrence being pillion rider of the motorcycle driven by the deceased and relied upon various documents i.e. certified copy of report under Section 173 of the Code of Criminal Procedure Ex. P1, certified copy of charge-sheet Ex. P2, certified copy of statement of the complainant Ex. P3, copy of FIR No. 242 dated 21.07.2011 Mark A, copy of post-mortem report Mark B, copy of

MLR prepared at LNJP Hospital, Kurukshetra Mark C, copies of ruqas Mark D to F. The mere fact that the FIR was lodged after a delay of 8 days cannot be taken as sufficient to doubt the facts narrated by the claimants particularly in the circumstances that lodging of FIR is not a *sine qua non* for lodging claim under the Motor Vehicles Act. The eye witness to the occurrence appeared in the witness box but counsel for the appellant has failed to point out any tangible material elicited in her cross-examination to impeach her credibility or doubt her statement that she was present at the spot. The contention raised by counsel with regard to deceased smelling alcohol as per mark R7 and mark C has been dealt in detail by the Tribunal with the observation that urine and blood samples were not taken, therefore, it cannot be ascertained that the deceased was under the influence of alcohol. Counsel for the appellant has failed to cite any medical text to hold that the deceased was under the influence of liquor as he was smelling alcohol. In this view of the matter, I do not find any error much less infirmity in the findings of the Tribunal holding against driver of the offending vehicle that he caused accident due to rash and negligent driving of Jeep bearing No. PB-08AJ-7482. That being so, contention raised by counsel for the appellant with regard to contributory negligence of the deceased does not hold good and liable to be rejected.

This brings the Court to quantum of compensation assessed by the Tribunal.

The Tribunal assessed income of the deceased at ₹5400/- per month on the basis of wage of an unskilled worker in July, 2011. As a

matter of fact, wage available to an unskilled worker in the State of Haryana in July, 2011 was ₹4643/-. The income assessed by the Tribunal is modified to the extent of ₹4650/- (in round figure). The Tribunal has deducted 1/4th towards personal and living expenses by taking into consideration number of claimants to be four. As there is no material to substantiate plea of the claimants that father of the deceased was dependent upon him, after excluding the father from array of claimants, admissible deduction would be 1/3rd in place of 1/4th. The Tribunal has adopted a multiplier of 15 and the same is affirmed. The Tribunal has allowed benefit of future prospects to the extent of 30% but the same would be 50% as the deceased was less than 40 years of age. In view of the above, loss of dependency comes to $\text{₹}4650 \times 12 \times 15 = 8,37,000 + 4,18,500(50\%) = 12,55,500 - 4,18,500$ (deduction) = 8,37,000/-.

The widow of the deceased is awarded an amount of ₹1,00,000/- for loss of consortium. The minor children of the deceased, namely, Bharat Dhiman and Sachin are awarded an amount of ₹1,50,000/- in equal share for loss of love and affection. The appellants/claimants shall be entitled to an amount of ₹25,000/- each for funeral and loss of estate. The amount of ₹5000/- awarded by the Tribunal for transportation is affirmed. The total compensation comes to ₹11,42,000 (8,37,000 + 1,00,000 + 1,50,000 + 50,000 + 5000) and the enhanced compensation is ₹1,94,300/-.

The enhanced compensation shall be payable to the children in equal shares with interest @ 7.5% per annum from the date of petition till

realization, to be deposited in Fixed Deposit Receipts in a nationalized Bank payable to them on attaining the age of majority.

Disposed of in the aforesaid terms.

September 09, 2016.
kanchan

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No