

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

FAO No.3546 of 2013 &

XOBJC No.122-CII of 2013(O&M)

Date of decision:27.9.2016

Oriental Insurance Co. Ltd.

....Appellant

VERSUS

Saroj Kumari and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. D.P. Gupta, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for respondents
No.1 to 5/cross-objectors.

REKHA MITTAL, J.

By way of this order, I shall dispose of FAO No.3546 of 2013 and cross objections No.122-CII of 2013 as these have emerged out of the same award dated 11.03.2013 passed by the Motor Accident Claims Tribunal, Chandigarh (in short 'the Tribunal').

The parties shall be referred to as 'the insurance company' and 'the claimants' for the sake of convenience.

Smt. Saroj Kumari and others filed an application under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') for grant of compensation in regard to death of Karan Singh in a motor vehicular accident that took place on 25.11.2007 while the deceased was driving car bearing No.CH03-H-7588 owned by Capt. Parminder Singh and the accident allegedly took place due to rash and negligent driving of car No.PB11-N-0097 by Harbans Singh, its driver.

The Tribunal assessed income of the deceased at Rs.4,000/- per month, added 30% towards future prospects, deducted 1/4th for personal expenses, adopted a multiplier of 14 to compute loss of dependency of Rs.6,55,200/-. In addition, a sum of Rs.20,000/- for cremation, expenses on last rites, loss of estate and consortium was awarded making total compensation to Rs.6,75,200/-.

Counsel for the insurance company would urge that there is no documentary evidence available on record that Karan Singh – deceased was working as a full time driver with Capt. Parminder Singh on car bearing No. CH03-H-7588. It is further argued that the Tribunal has committed an error by allowing benefit of future prospects despite the fact that the matter is pending consideration before a Larger Bench of Hon'ble the Apex Court in view of reference made in **National Insurance Company Ltd. Vs. Pushpa**, SLP (C) No.16735 of 2014, decided on **02.07.2014**.

Counsel for the claimants, on the contrary, has submitted that Capt. Parminder Singh, employer of the deceased, appeared in the witness box and tendered into evidence his affidavit Ex.PW1/A and has categorically deposed that the deceased was working as a driver on his car for the past 15 years and he was being paid salary at Rs.4,000/- per month besides food and shelter. It is argued that Karan Singh met with an accident while driving car of Capt. Parminder Singh and in the occurrence family members of Capt. Parminder Singh sustained injuries and compensation has been awarded to them in separate claim petitions disposed of vide common award passed by the Tribunal. According to counsel, income of the deceased is liable to be assessed more than what has

been allowed by the Tribunal. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court **Minu Rout and another Vs. Satya Pradyumna Mohapatra and others**, (2013) 10 SCC 695, wherein the Court assessed salary of the deceased driver at Rs.6,000/- per month as against Rs.3,000/- per month assessed by the Tribunal. In addition, it is submitted that compensation awarded under conventional heads needs enhancement.

I have heard counsel for the parties, perused the paper-book and records of the Tribunal.

Capt. Parminder Singh tendered into evidence his affidavit Ex.PW1/A and in the concluding para, he has deposed about employment of Karan Singh and his salary. There is no documentary evidence on record to prove employment of Karan Singh with Capt. Parminder Singh much less for the past about 15 years. There is also no evidence with regard to payment of salary at Rs.4,000/- per month. However, keeping in view testimony of Capt. Parminder Singh, the Tribunal has taken a reasonable view by assessing income of the deceased at Rs.4,000/- per month. An amount of Rs.1,000/- has been deducted towards personal expenses of the deceased who originally hailed from village Har Jalari, Tehsil and District Kangra (H.P.). Even, if the deceased was being provided food and lodging by his employer, he would certainly be requiring some amount for pocket money. In view of the facts and circumstances discussed hereinbefore, I do not find any reason to interfere in assessment of income made by the Tribunal.

Minu Rout's case (supra) pertains to an accident that took place in Orissa. Hon'ble the Supreme Court has held that the Tribunal ought to have taken salary of the deceased driver at Rs.6,000/- per month by taking judicial notice of the fact and post of a driver is a skilled job. However, nothing has been mentioned as to what was the basis for taking such a view by the Apex Court. Counsel for the claimants has not provided any data if minimum salary for a skilled worker in the State of Orissa is the same as available in Chandigarh in order to draw parity and derive advantage of the aforesaid judgment.

Under conventional heads, widow of the deceased is awarded an amount of Rs.1,00,000/- for loss of consortium. The claimants shall be entitled to an amount of Rs.25,000/- each for expenses on funeral and loss of estate.

With regard to compensation for loss of love and affection to the children, counsel for the insurance company has submitted that in **Puttamma and others Vs. K.L. Narayana Reddy and another, 2014 ACJ 526**, children and family members other than wife were awarded Rs.1,00,000/- for loss of love and affection, deprivation of protection, social security etc.. In **Rajesh and others Vs. Rajbir Singh and others, 2013 ACJ 1403**, the Court allowed an amount of Rs.1,00,000/- for loss of care and guidance for minor children. However, in **Juju Kuruvila and others vs. Kunjuamma Mohan and others, 2013(3) RCR (Civil) 817** Hon'ble the Supreme Court awarded an amount of Rs.1,00,000/- for loss of love and affection to each of the children of the deceased. As a matter of fact, Hon'ble the Apex Court has allowed different amounts for loss of love and affection, care and guidance to children of the deceased. Taking a

reasonable view, interest of justice would be better served if children of the deceased are awarded an amount of Rs.2,25,000/- in equal share and mother is allowed an amount of Rs.50,000/- for loss of love and affection.

In view of the above, total compensation comes to Rs.10,80,200/- and the enhanced compensation is Rs.4,05,000/- (Rs.10,80,200/- - Rs.6,75,200/-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization payable to the widow and children in equal share. The amount falling to share of the children and widow shall be deposited in a Fixed Deposit Receipt for a period of three years.

Cross objections are partly allowed in the aforesaid terms.

As a natural consequence, the appeal filed by the insurance company fails and is accordingly dismissed.

SEPTEMBER 27, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no