

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

(1)

**FAO No.4168 of 2016 (O&M)
Date of Decision: July 23, 2016.**

United India Insurance Company Ltd

.....APPELLANT(s).

VERSUS

Chanderpatti and others

.....RESPONDENT(s).

(2)

FAO No.4176 of 2016 (O&M)

United India Insurance Company Ltd

.....APPELLANT(s).

VERSUS

Parveena and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.P. Gupta, Advocate
for the appellant (s) in both appeals.

SURINDER GUPTA, J.

Both the above captioned appeals have been filed by United India Insurance Company Ltd. against the award(s) passed by Motor Accident Claims Tribunal, Kaithal (later referred to as 'the Tribunal') in MACT case No.62 of 2015 titled as *Chanderpatti and Anr. Vs. Rishi Pal and others* and MACT case No.63 of 2015 titled as *Parveena and Ors Vs. Rishi Pal and others*, allowing compensation of ₹13,25,790/- and

₹16,65,000/- respectively for the death of Kuldeep Singh and Sham Lal in a motor vehicle accident with bus bearing registration No.HR-64-6970 (later referred to as 'the offending vehicle').

2. The case of the claimants, in brief, is that on 05.04.2015 at about 3.30 p.m., Kuldeep Singh son of Mange Ram was standing on the main road near '*Vijay Bhatta*', Kotra, his cousin Shyam Lal alias Shyam Singh and Kuldeep Singh son of Bhim Singh were going towards village Kotra on Hero Honda motorcycle bearing registration No.HR-99-78HQ-TP791. When they reached main road, offending vehicle came from village Kotra side and hit the motorcycle of deceased by coming on the wrong side of the road. Occupants of the motorcycle fell on the road and were attended by eyewitness Kuldeep son of Mange Ram, Rajesh son of Bhim Singh and other labourers at Bhatta(brick kiln) and were taken to General Hospital, Kaithal where Sham Lal was declared dead, whereas Kuldeep Singh was referred to PGI, Chandigarh and succumbed to the injuries in PGI, Chandigarh on 10.04.2015. The matter was reported to the police vide FIR No.37 dated 05.04.2015 registered at Police Station Rajaund on the statement of Kuldeep son of Mange Ram in which Rishi Pal, driver of the bus was challaned by the police.

3. Respondents No.1 and 2 i.e. driver and owner of the offending vehicle denied the accident while respondent No.3(appellant) also contested the claim of claimants that the accident was caused by offending vehicle.

4. On appraisal of the evidence, the Tribunal recorded a finding that the accident had taken place due to rash and negligent driving of offending vehicle by respondent No.1. The Tribunal calculated the amount

of compensation for the death of Kuldeep Singh as follows:-

Age of deceased	25 years	
Occupation	Daily wager	
Sr.No.	Heads of claim	Amount
1.	Income	8000 per month
2.	50% addition towards future prospects	8,000+ 4,000)= 12,000 12000X12=1,44,000/- p.a.
3.	50% deduction towards personal and living expenses, being unmarried	1,44,000-72,000=72,000/-
4.	Multiplier	18
5.	Loss of dependency	72,000X18=12,96,000/-
6.	Medical expenses	4,790/-
7.	Funeral expenses	25,000/-
Total		13,25,790/-

5. The Tribunal calculated the amount of compensation for the death of Shyam Lal alias Shyam Singh as follows:-

Age of deceased	Between 36 to 40 years	
Occupation	Daily wager	
Sr.No.	Heads of claim	Amount
1.	Income	8000 per month
2.	50% addition towards future prospects	8,000+ 4,000)= 12,000 12000X12=1,44,000/- p.a.
3.	50% deduction towards personal and living expenses, being unmarried	1,44,000-48,000=96,000/-
4.	Multiplier	15
5.	Loss of dependency	96,000X15=14,40,000/-
6.	Loss of consortium	1,00,000/-
7.	Loss of love and affection for children	1,00,000/-
8.	Funeral expenses	25,000/-
Total		16,65,000/-

6. Learned counsel for the insurance company has assailed the compensation awarded in this case on four grounds. Firstly, he has argued that date of birth of deceased Kuldeep Singh was 06.01.1990 and on the

date of accident, he was 25 years 3 months old, as such, the Tribunal has wrongly applied the multiplier of 18 instead of 17 attracted in this case. Secondly, the Tribunal has taken the income of both the deceased as ₹8,000/- per month without any evidence on record. Thirdly, addition towards future prospects has been wrongly made despite the fact that the matter is still under consideration before the Hon'ble Apex Court in the reference made in case of ***National Insurance Company Limited Vs. Pushpa and others Appeal (C) No.8058 of 2014 decided on 02.07.2014 (MANU/SC/1246/2014)***. Fourthly, he has argued that driving licence of respondent No.1 was found invalid and recovery rights were allowed to the insurance company. The Tribunal should have, rather, exempted the insurance company and fixed the entire liability to pay the compensation on the driver and owner of the offending vehicle.

7. I have given a careful thought to the submissions of learned counsel for the appellant but find no merits in the same.

8. The accident took place on 05.03.2015. It is a well known fact that in the year 2015 even a daily wager was earning more than ₹300/- per day as daily wages. The Tribunal has not committed any error by taking the income of the deceased as ₹8,000/- per month. In case bearing FAO No.2565 of 2016 decided on 14.07.2016 by this Court, the income of daily wager assessed by the Tribunal as ₹10,200/- as per D.C. Rates in the year 2015 and in case bearing FAO No.4161 of 2016 decided on 22.07.2016, income of daily wager assessed by the Tribunal as ₹8,000/- per month in the year 2014, was found to be just and appropriate. In these days of high costs of living, even a labourer earns more than ₹9,000/- per month. The fact to

be kept in mind is that they do not feel satisfied by earning around ₹300/- per day but also go for over-time. In view of this, the view taken by the Tribunal regarding income of the deceased is upheld.

9. Deceased Kuldeep was 25 years 3 months old at the time of accident and the Tribunal applied the multiplier applicable for the age group of 20 to 25. Kuldeep had not attained the age of 26, as such, the Tribunal has rightly applied the multiplier of 18 as the multiplier of 17 is to be applied for the age group of 26 to 30. For the period 25 to 26 years, 30 to 31 years, 35 to 36 years, 40 to 41 years of age and so on, multiplier of previous age group of 20 to 25, 26 to 30, 31 to 35 and 36 to 40, is applicable and reference may be made to the observations in para 17 in case of ***Shashikala and others Vs. Gangalakshamma and another 2015(9) SCC 150***, which read as follows:-

“17. Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident i.e. 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier 14 which is the appropriate multiplier and the same is maintained. Total loss of dependency is calculated at Rs.16,82,310/-(Rs.1,20,165/- x 14).”

10. The matter of addition in the income of deceased towards future prospects has been discussed in detailed in cases bearing ***FAO No.4292 of 2015 decided on 01.09.2015, FAO No.4683 of 2011 decided on 18.12.2015, FAO No.2032 of 2014 decided on 06.04.2016 and FAO No.6595 of 2011 decided on 27.05.2016***. It has been observed that addition in the income of deceased is to be made keeping in view the inflationary

trend in which we all are living. The Tribunal has rightly applied the observations in case of ***Rajesh and others Vs. Rajbir and others (2013)9 SCC 54*** while award addition in income of deceased towards future prospects. The view taken in the above case was upheld by Hon'ble Apex Court in case of ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others 2015(3)RCR (Civil) 447.***

11. The Tribunal while directing the insurance company to pay the compensation at the first instance and then to recover the same from the owner and driver of the vehicle has relied on the verdict by the Hon'ble Apex Court in case ***National Insurance Company Ltd Vs. Swaran Singh 2004(1) ACJ 1(SC).*** In a catena of judgments this law has now been well settled that being insurer, the first liability to pay the compensation amount to the claimant(s) in a motor vehicle accident, is of insurance company and then to recover the same from the insured for any breach of terms of the insurance policy. No contrary law has been cited by learned counsel for the appellant.

12. As a sequel of my above discussion, all submissions of learned counsel for the appellant are rejected. Consequently, both the appeals filed by the appellant-insurance company have no merits.

Dismissed.

July 23, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No