IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

**FAO No.9040 of 2014 and**
**XOBJ-35-CII of 2015**

**Date of decision :21.01.2016**

**Future Generali India Insurance Company**

......Appellant

*Versus*

**Birmati Devi and others**

...Respondents

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Vishal Aggarwal, Advocate for appellant.

Mr. B.S.Bairagi, Advocate for respondents No.1 to 5-cross objectors.

****

**DARSHAN SINGH, J.**

The present appeal has been preferred by the appellant Future Generali India Insurance Company against the award dated 08.09.2014 passed by learned Motor Accidents Claims Tribunal, Hisar (hereinafter called the 'Tribunal').

2. Respondents No.1 to 5 filed the claim petition under Section 166 of the Motor Vehicles Act (hereinafter called the 'Act') for

grant of compensation to the tune of Rs.20,00,000/- along with interest @ 18% per annum on account of death of Harikesh in the motor vehicular accident which took place on 04.12.2012.

3. Respondents No.6, 7 and appellant-Insurance Company contested the claim petition by filing separate written statements. It was pleaded by respondents No.5 and 6 that the petitioners have concocted a false story only to grab the compensation from the answering respondents. Appellant-Insurance Company raised various legal and preliminary objections and pleaded that the petitioners have falsely involved the vehicle in the present case.

4. From the pleadings of the parties, the following issues were framed:-

1. Whether the accident in question occurred due to rash and negligent driving of the offending vehicle Mini Bus bearing No.HR-39B-8837 by respondent No.1? OPP

2. Whether the petitioners in both the petitioners are entitled to recover the compensation from the respondents, if so to what extent? OPP

3. Whether the petitions of the petitioners are not maintainable in law? OPR

4. Relief.

5. The learned Tribunal allowed the petition filed by respondents No.1 to 5 and awarded the compensation to the tune of Rs.15,18,000/- on account of death of Harkesh in this accident along with interest @ 7.5% per annum from the date of filing the petition till realisation. The appellant and respondents No.6 & 7 were held jointly and severally liable for payment of the amount of compensation.

6. Aggrieved with the aforesaid award dated 08.09.2014, the appellant-Insurance Company has preferred the present appeal.

7. Respondents No.1 to 5-claimants also filed the cross-objections for claiming enhancement in the amount of compensation.

8. I have heard Mr. Vishal Aggarwal, Advocate, learned counsel for appellant, Mr. B.S. Bairagi, Advocate, learned counsel for respondents No.1 to 5-cross objectors and gone through the paper-book carefully.

9. Learned counsel for the appellant-Insurance Company contended that the learned Tribunal has awarded the exorbitant award. The deceased was simply an agriculturist. His income has been wrongly assessed by the learned Tribunal @ Rs.6000/- per month. He also contended that the compensation awarded under other heads like love and affection is also not in accordance with law.

10. On the other hand, learned counsel for respondents No.1 to 5/claimants contended that the income of the deceased has been taken by the learned Tribunal on the lower side. The compensation on account of love and affection has also not been granted as required under law. He pleaded for enhancement of the amount of compensation.

11. I have duly considered the aforesaid contentions. But I do not find any substance in the contentions raised by learned counsel for both the parties.

12. The claimants have brought on record the copy of the Jamabandi Ex.P27 for the year 2010-2011 in order to show that deceased

was having the agricultural land and was an agriculturist. This fact could not be disputed by learned counsel for the appellant at bar. No doubt in case of an agriculturist, as the land remains with the legal heirs, his income is to be taken into consideration for the loss of supervision. The learned Tribunal has assessed the income of the deceased as a loss of supervision to the tune of Rs.6000/- per month, which is absolutely just and appropriate.

13. I also do not find any substance in the contentions that the learned Tribunal has not rightly awarded the compensation under other heads like loss of consortium, love and affection etc. The learned Tribunal has awarded the compensation for loss of consortium to respondent No.1 Birmati to the tune of Rs.1,00,000/-, loss of love and affection has been awarded to the daughter @ Rs.2,00,000/-, loss of love and affection for the widow and mother has been awarded @ Rs.1,00,000/- each. Learned counsel for the respondent-Insurance Company has pleaded that when the loss of consortium was awarded to the widow, she was not entitled for compensation under the head loss of love and affection. That may be so, but at the same time the Tribunal has not awarded the compensation on account of love and affection to the minor sons of the deceased. So, by making some deviations here and there under these heads, the final award of compensation as awarded by the learned Tribunal will remain almost unchanged. Thus, as a whole I do not find any illegality in the computation of the compensation by the learned Tribunal.

14. Thus, keeping in view my aforesaid discussion the present appeal as well as cross-objection have no merits and same are hereby dismissed.

**21.01.2016** **( DARSHAN SINGH )**
*sunil yadav* **JUDGE**