

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

FAO No.4380 of 2013(O&M)

Date of decision: 13.9.2017

New India Assurance Company Ltd.Appellant

VERSUS

Baljit Kaur and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vinod Gupta, Advocate for the appellant.

Mr. S.K. Garg, Advocate for respondents No.7 to 10.

Mr. Manu Loona, Advocate for respondent No.11.

REKHA MITTAL, J.

The present appeal preferred by the New India Assurance Co. Ltd. (hereinafter to be referred as 'the Company') directs challenge against award dated 15.04.2013 passed by the Motor Accidents Claims Tribunal, Mansa (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Lal Singh in a motor vehicular accident that took place on 21.09.2011.

The Tribunal assessed income of the deceased at Rs.5,000/- per month, deducted 1/4th towards personal expenses and applied a multiplier of 14 to compute loss of dependency at Rs.6,30,000/-. In addition, an amount of Rs.5,000/- on account of funeral expenses, Rs.5,000/- for loss of estate and Rs.10,000/- for loss of consortium to the widow has been awarded making total compensation to Rs.6,50,000/-. The

Tribunal has attributed negligence to the extent of 50% to deceased Lal Singh while driving Trola No.RJ-19-GA-9651 and the remaining 50% has been attributed to Harpreet Singh, driver of Truck No.RJ-13IG-1267. While deciding the question as to who would be liable to pay compensation and the extent to which compensation would be paid by the driver, owner and insurer of trola driven by Lal Singh and truck driven by Harpreet Singh, the Tribunal in the concluding lines of para 13 of the award has held that legal heirs of Sukhraj Singh – respondent ‘A to D’ are liable to pay compensation to the extent they inherited the estate of Sukhraj Singh (since deceased). Claimants are entitled to recover a sum of Rs.3,25,000/- from respondent No.2 therein i.e. legal heirs of Sukhraj Singh (since deceased). However in para 15, the Tribunal has held that the New India Assurance Co. Ltd. (respondent No.5 therein) who issued the package policy for vehicle No.RJ-19-GA-9651 is liable to pay compensation of Rs.6,50,000/- along with interest to the legal heirs of Lal Singh (claimants) but respondent No.5 is entitled to recover 50% of the amount i.e. Rs.3,25,000/- along with interest from the legal heirs of Sukhraj Singh (since deceased), owner of truck bearing No.RJ-13IG-1267.

Counsel for the appellant would urge that the claimants are entitled to receive compensation to the extent of 50% as remaining 50% is not payable to them qua negligence of 50% attributed to deceased Lal Singh. Further submitted that the claimants have not preferred any appeal to assail findings of the Tribunal on issue No.1 and findings on issue No.1 otherwise stands affirmed in the appeal preferred by Gurmail Kaur etc. i.e. FAO No.10470 of 2017 decided on 06.09.2017 in regard to death of Harpreet Singh whose legal heirs have been held entitled to 50% of the

assessed compensation. Another submission made by counsel is that since remaining 50% of compensation qua negligence attributed to Harpreet Singh is to be borne by the driver, owner and insurer, if any, of truck bearing No.RJ-13IG-1267, the appellant is not liable to pay any compensation to the claimants much less payment of entire compensation assessed by the Tribunal.

Counsel representing respondents No.7 and 8 is not in a position to refute contentions of counsel for the Company, in the given scenario.

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

The claimants have not preferred any appeal to challenge findings of the Tribunal on issue No.1 attributing 50% negligence to deceased Lal Singh. However, the Court while dealing with a statutory appeal can pass a judgment that ought to have been passed by the trial Court.

The Tribunal has assessed income of the deceased at Rs.5,000/- per month. The deceased was more than 40 years old but less than 50 years of age. The Tribunal has not assigned any reason for denying benefit of increase in income for future prospects. In the light of enunciation laid down by Hon'ble the Supreme Court in **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170**, 30% increase in income for future prospects is allowed. Deduction for personal expenses and multiplier adopted by the Tribunal is liable to be affirmed. In this manner, loss of dependency comes to Rs.8,19,000/- [Rs.8,40,000/-

(Rs.5000 x 12 x 14) + Rs.2,52,000/- (30% towards future prospects) – Rs.2,73,000/- (1/4th deduction towards personal expenses).

Under the conventional heads, the claimants shall be entitled to the following compensation:-

1. Loss of consortium to the widow	Rs.1,00,000/-
2. Loss of love and affection to minor children of the deceased	Rs.2,25,000/- (to be shared equally)
3. Loss of love and affection to the mother	Rs.50,000/-
4. Loss of estate	Rs.25,000/-
5. Expenses on funeral	<u>Rs.25,000/-</u>
Total	<u>Rs.4,25,000/-</u>

In view of the above, total compensation comes to Rs.12,44,000/- but the claimants shall be entitled to 50% thereof in the light of findings on issue No.1 whereby 50% negligence has been attributed to deceased himself.

The Tribunal has recorded contradictory findings while deciding as to how much compensation is payable to the claimants and who would be liable to pay the same. The appellant (insurance company) would have been liable to indemnify the insured of trolly No.RJ-19-GA-9651. As no liability to pay compensation has been fastened upon owner of the said vehicle, the Company (appellant herein) is not liable to pay compensation. However, the compensation shall be payable by the driver and owner of truck No.RJ-13IG-1267. As the driver and owner of the said vehicle have already passed away, the claimants shall be entitled to recover compensation from the estate left behind by Harpreet Singh and Sukhraj Singh.

For the foregoing reasons, the appeal stands disposed of in the aforesaid terms.

SEPTEMBER 13, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no