

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.4087 of 2015 (O&M)

Date of Decision.28.11.2017

National Insurance Company Ltd.

.....Appellant

Vs

Krishna Devi and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Dalel Singh Nain, Advocate
for respondent Nos.1 and 2.

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AMIT RAWAL J.(ORAL)

The appeal has been preferred by the insurance company against the finding rendered by the Tribunal whereby in the claim petition filed under Section 163-A of the Motor Vehicles Act, the claimants pleaded the income of the deceased as ₹4000/- per month but the Tribunal still entertained the same and awarded a compensation of ₹3,99,000/- including the amount of ₹25,000/- for funeral expenses and ₹25,000/- each for loss of love and affection to the parents, which is not the scope of Section 163-A of the Motor Vehicles Act.

Mr. Gupta, learned counsel appearing on behalf of the insurance company submits that the aforementioned compensation as granted in paragraph 24, which is extracted herein below, cannot be granted in the petition filed under Section 163-A of the Motor Vehicles Act, though the income has been taken as ₹36,000/- per annum and therefore, the only a sum of ₹4500/- can be granted under the conventional heads.

“24. As far as the multiplier is concerned, in view of the law laid down by Hon'ble Supreme Court of India in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and

another 2009 (3) RCR (Civil) 77, the multiplier of 18 is to be used if the deceased was 21 years of age. The amount of claim comes to the tune of Rs.18,000x18=Rs.3,24,000/-. Apart from that the claimants are entitled for Rs.25,000/- as funeral expenses. Apart from that the claimants are entitled for Rs.25,000/- each for loss of love and affection. In this way, the claimants are entitled for ₹3,24,000/-+₹25,000/-+₹25,000/-+₹25,000/-=₹3,99,000/-. The claimants are also entitled for interest at the rate of 9% per annum from the date of filing of the petition till the realization of the whole of this amount.”

He further submitted that the claimants have not been able to cite any material to justify the amount awarded by the Tribunal under the aforementioned heads by superseding the formula prescribed under the Schedule of Section 163-A of the Motor Vehicles Act. In the Schedule, the choice of multiplier is only to be seen for the disability purpose and not in case of death.

Learned counsel appearing on behalf of the claimants submits that the multiplier of 18 as adopted by the Tribunal is fair and just and cannot be tinkered with as the deceased was unmarried and left behind parents. Moreover, the deduction should have been 1/3rd as per the Schedule and not one half.

In rebuttal, Mr. Gupta submits that the aforementioned deduction cannot be altered to 1/3rd instead of one half, in the absence of any cross objection.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is some force in the submissions of Mr. Gupta, as it is specified provision under Section 163-A and as per the Schedule prescribed therein that the compensation as granted under the

conventional heads in paragraph *ibid*, cannot be granted and only a sum of ₹4500/- has to be granted i.e. ₹2500/- for loss of estate and ₹2000/- for funeral expenses. Therefore, the compensation is required to be re-assessed. I will take the income of the deceased as ₹36,000/- as taken by the Tribunal, make a deduction of 1/3rd towards personal expenses and apply a multiplier of 17 as per the Schedule to assess the loss of dependency as ₹4,08,000/-. To this I will add, ₹2500/- towards loss of estate and ₹2000/- towards funeral expenses. In all, the compensation payable shall be ₹4,12,500/-.

In view of the ratio decidendi culled out by the Hon'ble Supreme Court in *U.P.S.R.T.C. Vs. Km. Mamta and others (2016) 4 SCC 172*, the Court being the first appellate Court can always exercise the power under Order 41 Rule 33 CPC and grant the relief in the absence of any cross appeal. Therefore, I enhance the amount of compensation to ₹4,12,500/-.

The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization. The enhanced amount shall be distributed equally between the parties. The liability shall remain the same as has already been determined by the Tribunal.

The award passed by the Tribunal is modified to the above extent and the appeal filed by the insurance company is dismissed.

(AMIT RAWAL)
JUDGE

November 28, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes