

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

230

FAO No.82 of 2015 (O&M)
Date of decision: 01.08.2017

New India Assurance Company Ltd.

..... Appellant

Versus

Neelam and others

..... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Sumit Gupta, Advocate
for respondents No.1 to 4.

Mr. Jitender Nara, Advocate
for respondents No.5 and 6.

RITU BAHRI, J. (ORAL)

FAO No. 82 of 2015 & Cross Objection No. 78-CII-2015

Appeals and cross objections, as noticed above, are being disposed of by this common judgment, having arisen out of the impugned Award dated 20.09.2014, passed by the Motor Accident Claims Tribunal, Sonapat.

Facts not in dispute

Brief facts of the case are that the deceased along with Anil Kumar son of Sultan Singh resident of village Jagsi were going on motorcycle bearing registration no.HR26-AW-9039 to the house of his sister-in-law in village Kila Jagargarh. The motorcycle was being driven by the deceased on a moderate speed on the extreme left side of the road. At about 6.00 p.m., when they reached in front of the gate of stadium of village Rindhana, then the offending vehicle came from the side of Julana, which was being driven by the

respondent No.1 with a fast speed and in a rash and negligent manner and struck against the motorcycle of deceased by coming on the wrong side. Due to this collision, Anil Kumar fell on the Kachcha portion of the road and the deceased along with his motorcycle came under the front wheel of the tractor. Some boys were playing in the stadium and came on the spot. When Anil Kumar and other persons were taking care of the deceased, then the respondent No.1 fled away from the spot on his tractor towards Gohana. After making arrangement for a vehicle, Anil Kumar shifted the deceased to CHC Gohana for treatment. After giving first aid to the deceased, the doctors referred him to PGIMS, Rohtak, where the deceased remained under treatment up to 06.04.2012 and died in PGIMS, Rohtak on 06.04.2012 at about 6.00 a.m. due to the injuries sustained by him in the accident. The police recorded the statement of Anil Kumar at PGIMS, Rohtak, upon the basis of which, FIR No.59 dated 06.04.2012 under Sections 279/304A, IPC was registered against the respondent No.1. Consequently, the claimants-respondents filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

The Tribunal, on the basis of evidence led by the parties, gave finding on issue No.1 in favour of the claimants by observing that the accident had taken place on account of rash and negligent driving of respondent No.5-Kaptan, driver of tractor bearing registration No.RJ08-RA-1023. While assessing compensation, income of the deceased was taken as Rs.5740/- per month, out of which 1/4th amount was deducted towards his personal expenses. The dependency of claimant, thus, came to Rs.4305/- per month. 50% of the above income has been added as future prospects as the deceased was 21 years of age at the time of accident, therefore, the monthly income of the deceased came to Rs.6,458/- and the multiplier of '18' was applied. Thus, the claimants

were found entitled to compensation of Rs.13,94,928/- (Rs.6458 x 12 x 18). In addition to it, Rs.25000/- were awarded towards funeral expenses of deceased. Claimants were also held entitled to a sum of Rs.25000/- towards pain, loss and sufferings and an amount of Rs.3,000/- towards transportation expenses. Hence, the claimants were found entitled to total compensation of Rs.14,47,928/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization.

Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal.

Arguments Advanced

On the one hand, learned counsel for the appellant-Insurance Company argued that the compensation awarded by the learned Tribunal on the higher side.

On the other hand, learned counsel for the cross objector-respondent Nos.1 to 4 contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced, in view of the judgment *New India Assurance Co. Ltd. vs. Gopali & others*, 2012 (12) SCC 198, *Asha Verman and others vs. Maharaj Singh and others*, 2015(2) RCR (Civil) 520, *Sarla Verma and others vs. Delhi Transport Corporation and another*, 2009 (3) RCR (Civil) Page 77, *Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54 and *Munna Lal Jain and another vs. Vipin Kumar Sharma and others*, 2015(3) Recent Apex Judgments 459.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

The appeal preferred by the Insurance Company for modification of the awarded amount and the cross objections filed by claimants-respondent

Nos. 1 to 4 for enhancement of the amount is liable to be modified in view of the above mentioned judgments and the compensation is re-assessed as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs.5740/- per month
(ii)	50% of (i) above to be added as future prospects	Rs.5740+Rs.2870=Rs.8610/-
(iii)	25% of (ii) deducted as personal expenses of the deceased	Rs.8610-2152 = 6458/- per month
(iv)	Compensation after multiplier of 18 is applied	Rs.6458X12X18=13,94,928/-
(v)	Loss of love and affection to parents and sisters	50,000X4=2,00,000/-
(vi)	Funeral charges	Rs.25,000/-
(vii)	Pain, loss and sufferings	Rs.25,000/-
(vii)	Transportation expenses	Rs.3,000/-
(vii)	Total Compensation awarded	Rs.16,47,928/-
(viii)	Enhanced amount of compensation	16,47,928 – 14,47, 928 = 2,00,000/-

Resultantly, the enhanced amount of compensation of Rs.2,00,000/- (**in Cross Objection No. 78-CII of 2015**) shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539***. Remaining conditions of disbursal of amount shall remain unaltered.

Resultantly the appeal filed by appellant-Insurance Company is dismissed and cross objections filed by respondent Nos.1 to 4, stands partly allowed.

(RITU BAHRI)
JUDGE

01.08.2017
D.Bansal

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No