

119.

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

FAO-377-2017 (O&M)

Date of decision:17.02.2017

ORIENTAL INSURANCE COMPANY LTD ... Appellant

versus

RAJINDER KAUR & ORS Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

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

Mr. Akshay Jindal, Advocate,
for respondents No.1 to 5.

HARI PAL VERMA, J.

The appellant-Insurance Company has filed the present appeal against the award dated 01.10.2016 passed by Motor Accident Claims Tribunal, Hoshiarpur (for short, 'the Tribunal').

The respondents No.1 to 5/claimants have filed a petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of death of Narwinderjit Singh. The claimants are widow, minor children and old parents.

As per the claim petition on 11.02.2016, the deceased-Narwinderjit Singh along with his wife Rajinder Kaur were going from their village towards Chhabbewal side on motorcycle No.PB-07-Q-6029. They were being followed by Hargobind Singh and Charanjit

Singh on their separate Activa Scooter. The motorcycle was being driven by the deceased-Narwinderjit Singh whereas his wife Rajinder Kaur-claimant No.1 was sitting on the pillion seat of the motorcycle. However, when they reached near Toll Plaza, Nangal Shaheedan, PS Sadar, Hoshiarpur, a Swift Car No.PB-07-V-4921 which was being driven very rashly, negligently, without blowing any horn and at a high speed by Paramjit Singh (respondent No.6 herein), came from their back side i.e. Hoshiarpur side and struck against the motorcycle of the deceased on the extreme left side of the road. Resultantly, both Narwinderjit Singh and Rajinder Kaur fell down from their motorcycle and received serious injuries on their persons. They were removed to IVY Hospital, Ram Colony Camp, Hoshiarpur from the place of accident where Narwinderjit Singh died on 16.02.2016 due to the accidental injuries whereas Rajinder Kaur remained admitted up to 20.02.2016. FIR No.21 dated 16.02.2016 under Sections 338, 304-A, 427, 279 IPC was registered against the driver of the offending vehicle at Police Station Sadar, Hoshiarpur on the statement of Hargobind Singh.

The Tribunal has returned a finding of fact that the accident has taken place due to rash and negligent act of the driver of the Swift Car bearing registration No.PB-07-V-4921 due to which Narwinderjit Singh died. The deceased-Narwinderjit Singh was below 37 years of age and was an agriculturist by profession. He was also doing dairy farming. AW4-Sarabjit Kaur, Sarpanch of Village Bilaspur, has

supported the aforesaid fact and further stated that the deceased had also taken the shamlat land of Gram Panchayat of Village Bilaspur on chakota, which has duly been established from two receipts on record i.e. Exs.A23 and A24 for the years 2014 and 2015. The receipts had been issued by the Gram Panchayat in the name of the deceased. The other receipts Exs.A25 to A28 for the year 2010 to 2015 have also been admitted by the Sarpanch of the village. Exs.A13 to A20 are the receipts issued in the name of deceased-Narwinderjit Singh prior to his death which showed that the deceased used to sell the agriculture produce to the agencies as projected in “J” forms and on calculation thereof, approximately the sale of produce comes to be more than ₹1,20,000/-. Accordingly, the Tribunal awarded the compensation as under:-

Sr. No.	Head	Computation
1.	Income	Rs.12,000/- per month
2.	50% of Sr. no.1 above to be added as future prospects	Rs.12000/- + Rs.6000/- =Rs.18000/- per month
3.	1/4 th of Sr. no.2 deducted as personal and living expenses	Rs.18000/- - Rs.4500/- =Rs.13500/-
4.	Compensation after applying multiplier of 15	Rs.13500/- x 12 x15=Rs.24,30,000/-
5.	Loss of consortium	Rs.1,00,000/-
6.	Loss of love and affection for children i.e. claimants no.2 and 3 who are minors	Rs.2,00,000/- (Rs.One lac each)
7.	Funeral expenses	Rs.25,000/-
8.	Medical charges	Rs.2,40,885/-
9.	Counsel fee assessed	Rs.3,000/-
	Total compensation	Rs.29,98,885/-

Learned counsel for the appellant has argued that the income of the deceased assessed by the Tribunal is on the higher side

and there was no material before the Tribunal to consider the income of

the deceased as ₹12,000/- per month. He has further argued that the deceased was cultivating land owned by his 80 years old father and had further taken about 5 acres of land on chakota. Since the agricultural land belongs to his father, the income of the deceased has been assessed on higher side and no loss has been caused to the family of the deceased as land still remains under the ownership of the father of the deceased even after his (Narwinderjit Singh's) death. Thus, the entire sale proceeds of ₹1,20,000/- as being received could not have been accounted as the income of the deceased. The Tribunal has not applied deduction on the sale proceeds of ₹1,20,000/- which will include the cost of seeds, manure/fertilizer, pesticides, irrigation facilities, transportation etc. He has further argued that the compensation granted under the head of 'future prospects' is not applicable as the deceased was an agriculturist and was not drawing a regular salary. He has relied upon the order dated 31.07.2017 passed by this Court in **FAO No.7404 of 2016-New India Assurance Company Limited Versus Sunita and others** to contend that even if the court has to accept the future prospects at this stage, the amount added towards future prospects should be kept in the fixed deposit in the name of widow which shall be subject to the final outcome of the appeal. The matter regarding payment of compensation under the head of future prospects is pending consideration before the Hon'ble Apex Court in **National Insurance Company Limited Versus Pushpa and others-2015 (6) RCR (Civil) 844.**

On the other hand, learned counsel for the respondents No.1 to 5 has argued that the learned Tribunal has awarded just compensation. The deceased was an agriculturist and used to take shamlat land on chakota basis which is evident from Exs.A23 and A24.

I have heard learned counsel for the parties.

The deceased-Narwinderjit Singh was about 37 years of age and at the time of his death, he was an agriculturist by profession. The Tribunal has taken the income of the deceased at ₹12,000/- per month. So far as the plea with regard to allowing benefit of future prospects, this Court in the case of **Smt. Seema and others Versus Bijender Singh and another in FAO-692-2000, decided on 25.05.2016** has held that even in the case of an agriculturist, benefit of future prospects is to be allowed. The aforesaid controversy has also been considered by this Court in **FAO-6747-2016 decided on 23.12.2016-New India Assurance Company Limited Versus Ishabbir Singh and others** whereby this Court has observed that in view of law laid down in **Rajesh and others Versus Rajbir-2013 ACJ 1403 (SC)**, the Hon'ble Apex Court has awarded future prospects after taking into consideration number of precedents. The said judgment was reconsidered in the case of **Munna Lal Jain and another versus Vipin Kumar Sharma and others-(2015) 6 SCC 347**. No doubt the issue regarding award of compensation under the head future prospects has been referred to the larger Bench, but the dictum laid down in **Rajesh and others' case** (supra) and **Munna Lal Jain's case** (supra) have not

been stayed in any manner. So, this Court does not find any plausible explanation to interfere with the grant of future prospects in favour of claimant.

In view of aforesaid discussion, I see no reason to differ with the conclusion drawn by the Tribunal. The appeal filed by the Insurance Company is, accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

17.02.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No