

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

FAO No. 6799 of 2017 (O&M)

Date of decision: 23.10.2017

ICICI Lombard General Insurance Company Ltd.

...Appellant

versus

Rajbir Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. R.M. Suri, Advocate for
Mr. Sandeep Suri, Advocate
for the appellant.

RAJIV NARAIN RAINA, J. (ORAL)

1. There is delay of 1432 days in re-filing the appeal though the appeal was filed within the limitation prescribed. The delay in re-filing has been explained as largely occurring in the office of Mr. Suri, Advocate. Having read the contents and the explanation given, I would condone the delay in re-filing the appeal and take up the main appeal for consideration on merits.

2. I have examined the case on merits in the appeal filed by the Insurance Company and find no fundamental infirmity in the impugned award or in the determination of any of the jurisdictional facts which entitle claimants to relief of compensation in a death case but at the same time find the compensation package under the conventional heads rather inadequate. The total compensation of Rs. 4, 12, 040/- had been awarded by the Motor Accident Claims Tribunal,

SBS Nagar vide award dated 22.07.2013 with interest @ 6% per annum from the date of the claim petition till payment.

3. The multiplier of 11 has been applied by a rough assessment of age at 52 years at the time of death in an accident which took place on 02.04.2012. No documentary proof of age was brought on record by the claimants and the Tribunal has chosen to apply the suitable multiplier from the age bracket '51-55'. Income has been assessed in a sum of Rs. 3, 300/- per month. The deceased was in private employment.

4. The deceased was riding a bullet motorcycle while travelling from Kot Fatuhi to Village Sandhawan. It was in the evening at about 7.30 PM when he was hit by a speeding Matador losing balance to receive the injuries which proved fatal. The compensation of Rs. 20,00,000/- was demanded by the claimants in the application under Section 166 of the Motor Vehicles Act, 1988 which has been restricted to Rs. 4.2 lacs and odd in grand total.

5. The claimants are not in appeal, but nevertheless I would not leave the matter there to rest and find that at least a few things ought to have been granted being conventionally awarded which have not been awarded when they deserve to be, that is, funeral expenses and loss to estate are not being granted.

6. The deceased left behind his wife, two daughters aged about 24 and 18 years respectively and his aged parents. There is no manner of doubt on file that the vehicle was covered by third party

insurance policy with premium paid and the driver of the offending vehicle held a valid and effective driving licence at the time of accident when driving the offending vehicle at speeds which he ought not to have and that too recklessly.

7. Since a few of the amounts which could have been granted legally under traditional heads of claim, have not been made over, then in order to do substantive justice power deserves to be exercised under Order 41 Rule 33 of the CPC to do substantial justice to the claimant party by increasing the compensation in the following manner (in addition to the amounts already awarded) as follows: Firstly, compensation for loss of consortium to wife @ Rs. 1,00,000/-. To this may be added Rs. 1,00,000/- each for loss of love, affection and guidance to the two daughters. Though they were major at the time of death but the view of this Court is that major children are also entitled to compensation for loss of love and affection and the deprivation of continuous guidance in a Hindu society where children at any age often seek guidance of their father, from careers building to marriage to investments etc. The parents-in-law-grandparents have not been assigned any compensation and looking to their extremely advanced age, a sum of Rs. 50,000/- to both is granted. Loss to estate is granted @ Rs. 5,000/- which is a statutory maximum under Section 163-A. The total amount thus calculated comes to Rs. 3, 55, 000/- in addition to the amount already awarded.

8. The appeal is dismissed and the award is modified by

exercise of appellate powers additionally under Order 41 Rule 33 CPC to do substantial justice to the claimants. The amounts be disbursed within two months before the Executing Court/Tribunal. The amount beyond the award of the Tribunal, if not deposited so far, including the enhanced compensation by this order shall carry interest @ 7.5% per annum from the date of the award till realization.

(RAJIV NARAIN RAINA)
JUDGE

October 23, 2017

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Whether speaking/reasoned : Yes
Whether reportable : No