

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6876 of 2017 (O&M)
Date of Decision: 24.10.2017

Bajaj Allianz General Insurance Company
Limited

... Appellant

Versus

Smt. Raj Bala and others

... Respondents

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

Present: Ms. Sheenu Sura, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.(Oral)

1. No jurisdictional issues are involved for determination in this appeal and the parameters for awarding compensation under different heads of claim exist on file. The offending vehicle was insured. The driver held a valid driving licence. Neha, the girl child who became a victim of the accident was 11 years old. She was a student of Class-IV and died in accident on April 02, 2016 as a result of succumbing to grievous and fatal injuries sustained on the body. The offending vehicle was driven in a rash and negligent manner, is a finding recorded by the Motor Accident Claims Tribunal, Jhajjar in its award dated July 11, 2017 and I have no reason to disagree. The argument presently centres on quantum of compensation.

2. Learned counsel appearing for the Insurance Company says that it is inflated and should be reduced. The Tribunal has awarded lump-sum amount of ₹5 lakh for loss of estate. This is agitated as excessive for a girl

child of 11 years. Funeral expenses have been awarded in a sum of ₹50,000/- which is twice the amount in Rajesh and others v. Rajbir Singh and others, (2013) 9 SCC 54. For loss of love and affection to the parents and to the siblings an amount of ₹2 lakh has been awarded by the Tribunal which is also on the higher side. It is so argued.

3. I do not agree with the submissions that the amount awarded is by any chance a case of over-compensation or which is unfair or unjust to have awarded. What is just and appropriate compensation in terms of money for loss of human life at a tender age is not an easy question to answer. Certain assumptions have to be made in this jurisdiction on the basis of probability. It is more probable that had the girl not died she would have in the future contributed at least an amount of ₹5 lakh to the common wealth of the family.

4. I could have reduced the award for funeral expenses by half but would not do so since the Tribunal has exercised discretion and discretion is normally not open for interference in first appeal against the order. For loss of love and affection can hardly be measured with scale in hand as there can be no real or accurate measure of what untimely death in a road accident leaves in its wake and, therefore, I would not interfere on this score as well. Even by interchanging the heads and juggling the amounts, the final result of the award does not appear to be so excessive as to invite judicial review in appeal to water it down or obliterate it. The appellants were the mother and father of Neha. If Neha had siblings they were not joined in the array of claimants. I asked the learned counsel whether she was the only child of her parents but there is no positive indication in the record available on file

whether she was the only child, and if she were it would make the grief of those left behind in the family even greater to account for higher compensation.

5. Unable to make any dent in the appeal for its admission the Learned counsel relies on the decision of the Supreme Court in Kishan Gopal and another v. Lala and others, 2013 STPL (Web) 680 SC and the decision of this Court in FAO No.318 of 1999, Rajinder Prashad Aggarwal v. M/s Sagar Goods Carrier and others, decided on September 11, 2014 and FAO No.1476 of 2011 decided on April 22, 2013. I find no binding ratio in these orders which might compel me to apply in this case.

6. For the foregoing reasons, I find no substance in this appeal and would accordingly dismiss it in limine. The award is sustainable on law and facts and does not deserve to be tinkered with when discretion has been judiciously exercised without any judicial overreach.

(RAJIV NARAIN RAINA)
JUDGE

24.10.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*