

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

F.A.O No. 7887 of 2017

Date of decision:- 05.12.2017

United India Insurance Co. Ltd.

...Appellant

Versus

Rajniti Prasad and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Harsh Aggarwal, Advocate
for the appellant

RITU BAHRI J. (Oral)

C.M. No. 26031-CII-2017

For the reasons mentioned in the application, delay of 16 days in filing of the appeal is hereby condoned.

The application stands disposed of.

F.A.O No. 7887-2017

1. The present appeal has been preferred by the Insurance Company-appellant, seeking modification of the award passed by the learned Motor Accident Claims Tribunal, Gurugram (Haryana) (for short, 'the Tribunal') to the tune of Rs.16,05,000/-, vide impugned award dated 10.07.2017.

2. On 17/18.04.2015, eye witness Mohd. Danish was driving his motorcycle bearing registration NO. DL9SAX4139 and his brother Sajid was driving his scooty bearing registration No. HR-26F-7667. On this scooty, Karam Kumar Chuahan was the pillion rider. When they reached near Bikaner Chownk, Khandsa then an accident was caused by a truck bearing registration No. HR-38P-3699 with scooty. The driver of the truck

hit the scooty from behind. Sajid and Karan Kumar Chauhan were dragged by the offending truck. Mohd Danish raised alarm and the driver of the truck ran away from the spot leaving behind his truck. They were brought to General Hospital, Gurugram. Karan Kumar died due to accidental injuries. F.I.R No. 188 dated 18.04.2015 under Section 279/304-A IPC was registered at P.S. Kherki Daula, Gurgaon.

COMPENSATION ASSESSED BY MACT

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs.10000/- per month
(ii)	50% of (i) above to be added as future prospects=	Rs.10000+Rs.5000=Rs.15000/- per month
(iii)	1/2 of (ii) deducted as personal expenses of the deceased=	Rs.15000-Rs.7500=Rs.7500 per month
(iv)	Compensation after multiplier of 17 is applied	Rs.7500 X 12 X 17= Rs.15,30,000/-
(v)	Loss of love and affection	Rs.50,000/-
(vi)	Funeral Expenses	Rs.25,000/-
	Total Compensation awarded	16,05,000/-
	Enhanced amount of compensation	Rs.16,05,000/-

Learned counsel for the appellant is seeking modification of the award on two grounds i.e (i) Since Mohd Danish eye witness was not cross examined, the negligence remain unproved, as it was only the eye witness who can prove the manner of accident or negligence of offending vehicle. (ii) The future prospects as well as the compensation given under convention heads needs to be modified in view of judgment of Hon'ble the Supreme Court of India in a case of *National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017.*

The argument of learned counsel for the appellant with regard

to negligence part is liable to be rejected as it is not necessary to examine the eye witness to prove the negligence. Moreover, F.I.R was registered on the same day and the vehicle was also impounded by the police during investigation. The driver and the owner of the vehicle also not disputed that the accident had taken place. The driver of the vehicle is also facing criminal trial on account of the above accident.

As far as the slight modification in the award it requires consideration in view of judgment of Hon'ble the Supreme Court of India in a case of *National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*, and the same is being re-assessed as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs.10000/- per month
(ii)	40% of (i) above to be added as future prospects=	Rs.10000+Rs.4000=Rs.14000/- per month
(iii)	½ of (ii) deducted as personal expenses of the deceased=	Rs.14000-Rs.7000=Rs.7000 per month
(iv)	Compensation after multiplier of 17 is applied	Rs.7000 X 12 X 17= Rs.14,28,000/-
(v)	Conventional heads (Loss of estate, funeral expenses)	Rs.30,000/-
	Total Compensation to be awarded	14,58,000/-

10. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed. However, the appellant is directed to disburse the compensation amount of Rs.14,58,000/- to the claimants within a period of four weeks from the date of receipt of certified copy of this order and inform this court. The claimants shall also get interest @ 9% per annum from the date of filing of the claim petition on the above amount, 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. The remaining conditions of disbursal of amount shall remain unaltered.

05.12.2017
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>