

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

101

FAO-2511-1998 (O&M)

Date of Decision : 04.10.2018

Smt. Rajbala and another

..... Appellants

Versus

Balbir and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Sushil, Advocate
for Mr. R.A. Sheoran, Advocate
for the appellants.

None for respondents Nos.1 and 2.

Mr. R.C. Gupta, Advocate
for respondent No.3.

Mr. Naman Nanda, Advocate
for Mr. Sanjay Vashisth, Advocate
for respondents No.4 and 5.

Mr. Harjinder Singh, Advocate
for respondent No.6.

AJAY TEWARI, J. (ORAL)

This appeal has been filed for enhancement of compensation and for modifying the award dated 12.06.1998 passed by the Tribunal awarding compensation of Rs.1,95,000/- alongwith interest @ 12% p.a. on account of death of Vinod Kumar in a motor accident.

Since very limited issue has been raised detailed reference to the facts is not required.

At the very outset, counsel for the appellants has argued that originally by award dated 12.06.1998 the insurance company had been exonerated, against which the FAO No.2356 of 1998 which was decided by judgment and order dated 23.07.2001 whereby the matter was remanded back to the Tribunal for deciding the issue of fake driving license afresh after giving opportunity to both the parties to lead their evidence. That order was taken on record as Mark 'A' on the last date. Consequent thereto, there Tribunal had passed its fresh award dated 28.02.2002 which was taken on record as Mark 'B' on the last date wherein it had reiterated the finding that the driver did not possess a valid driving license. It, however, directed the insurance company to pay the compensation but granted recovery rights.

None has appeared on behalf of respondents No.1 and 2 to challenge that finding. No appeal also has been filed by them. In the circumstances, that finding is affirmed.

Counsel for the appellants has argued that as per the Constitution Bench judgment of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009*** future prospects of 40% has to be granted. Counsel for the respondent No.3 has very fairly accepted this argument. Consequently, I grant future prospects of 40%.

Counsel for the appellants has further argued that nothing has been awarded under the conventional heads and as per the judgment of the Supreme Court in Pranay Sethi case (supra), an amount of Rs.70,000/- has to be awarded under the conventional heads. Counsel for the respondent

amount of Rs.70,000/- under the conventional heads.

Counsel for the respondent No.3 has pointed out that the deduction of 1/4th has wrongly been taken by the Tribunal whereas it should be 1/3rd. Counsel for the appellants is not in a position to deny this fact. Consequently, I hold that deduction of 1/3rd has to be applied.

Counsel for the respondent No.3 has further pointed out that interest @ 12% is too excessive. In my opinion, the interest is not excessive in view of the judgment of Supreme Court in *Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018, decided on 18.09.2018*. This argument is therefore rejected. The whole compensation amount shall be given alongwith interest @ 12% p.a. from the date of filing of the claim petition till the date of payment. The rest of the award shall remain unchanged and apportionment and management would be as per the direction of the Tribunal.

Appeal stands disposed of and the award is modified accordingly.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

October 04, 2018

poojasharma-I

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No