

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

**FAO No.1707 of 2005
Date of Decision:03.08.2018**

New India Assurance Company Limited

...Appellant

Versus

Paramjit Kaur and others

...Respondents

FAO No.678 of 2005

Paramjit Kaur and others

...Appellants

Versus

Gurwinder Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Vinod Gupta, Advocate for the appellant-Insurance Co. in
FAO No.1707 of 2005 and for respondent in FAO No.678 of
2005.

Ms.Jyoti Sareen, Advocate for the appellants in
FAO No.678 of 2005 and for respondent in
FAO No.1707 of 2005

ANIL KSHETARPAL, J. (ORAL)

By this judgment, FAO Nos.1707 of 2005 and 678 of 2005 shall stand disposed of, as both are arising out of a common award passed by the learned Motor Accident Claims Tribunal (for short `the Tribunal). One appeal is preferred by the Insurance Company, whereas another appeal is filed by the claimants for enhancement of compensation awarded by the learned Tribunal.

Learned counsel for the Insurance Company in FAO No.1707 of 2005 has submitted that the learned Tribunal has wrongly recorded a finding that driver of the Tractor Trailer was rash and negligent. He has further submitted that rear tyre of the Tractor Trailer had burst, as a result whereof, ring of the wheel separated and hit the deceased. Thus, this is act of God and, therefore, there was no negligence on the part of driver of the offending vehicle.

This Court has considered the submissions and found no substance therein.

It is the duty of the owner and the driver to maintain their vehicle in good and roadworthy condition. If tyre of the vehicle which was driven on the road had suddenly burst and the ring of the tyre on which the tyre is fitted had also come out, it is obvious that the vehicle was not maintained properly. The respondents have not led any evidence to prove that the tyres of vehicle were in perfect and roadworthy condition and the vehicle was maintained properly.

In view thereof, there is no substance in the arguments of the learned counsel for the Insurance Company and accordingly, this appeal is dismissed.

Now let us deal with the appeal filed by the claimants for enhancement of compensation awarded by the learned Tribunal.

Sukhwinder Singh (deceased) aged about 30 years died in a motor vehicular accident as noted above. He was in the employment of Oswal Sugar Mills and drawing a salary of Rs.6,545/- per month, as per the Salary Certificate. However, when official of the Sugar Mills appeared in the evidence to prove the salary certificate, he deposed that carry home

salary of the deceased was Rs.5,555/- per month. He pointed out that actual salary was Rs.4865/-. Apart from above, the employee was also entitled to Rs.200/- per month as medical expenses and Rs.487/- per month towards house rent.

Learned Tribunal without any justification assessed the income of the deceased at Rs.3000/- per month. Once it has come in the evidence that he was permanent employee of Oswal Sugar Mill working as Fitter Helper and official of Mill has been examined, there was no reason to ignore the aforesaid evidence. However, it is also correct that certain allowances payable cannot be calculated for the purpose of assessing the income for the purpose of working out dependency. Hence, this Court assesses salary of the deceased of Rs.5555/-per month for the purpose of assessing the compensation and dependency.

Since the deceased had left behind widow, two minor children and parents, therefore, deduction towards personal expenses could not be more than 1/4th. Although the learned Tribunal has applied the multiplier as 16, but as per the judgment of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi Transport Corporation & others, 2009 (3) RCR (Civil) 77**, the multiplier of 17 has to be applied.

As per the judgment of the Constitution Bench of the Hon'ble Supreme Court in **SLP (C) No.25590 of 2014 (National Insurance Company Limited Vs Pranay Sethi and others) decided on 31.10.2017**, appellants shall also be entitled to 40% addition on account of future prospects on account of increase in the income, as the deceased was below the age of 40 years.

Taking into consideration the aforesaid facts, the award

passed by the Motor Accident Claims Tribunal stands modified. The income of the deceased is assessed at Rs.7777/- per month including future prospects. $[5555+(5555 \times 40\%)]$. $\frac{1}{4}^{\text{th}}$ is to be deducted towards personal expenses and thus yearly dependency comes to Rs.69,993/- $[Rs.7777-(7777 \times \frac{1}{4}) \times 12]$. After applying the multiplier of 17, the dependency would come to Rs.11,89,881/- $(Rs.69,993 \times 17)$. The learned Tribunal awarded a sum of Rs.2,000/- towards last rites, however, as per the judgment of **Pranay Sethi (supra)**, the claimants shall be entitled to Rs.70,000/- in total under conventional heads (for loss of consortium Rs.40,000/-, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses). Thus, total amount payable to the claimants comes to Rs.12,59,881/- $(Rs.11,89,881/- + Rs.70,000/-)$. Enhanced amount payable to the claimants after adjusting the amount awarded by the Tribunal comes to Rs.11,90,680/- $(Rs.12,59,881 - Rs.3,86,000/- = Rs.8,73,881)$, which is rounded off to Rs.8,73,900/-.

Claimants shall also be entitled for interest @ 6% per annum on the enhanced amount, i.e. Rs.8,73,900 from the date of filing of petition till realization.

With the above modification in the impugned award dated 20.11.2004 passed by the Tribunal, the appeal filed by the claimants is allowed, whereas the appeal filed by the Insurance Company is dismissed. Pending application(s), if any, shall also stand disposed of.

03.08.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No