

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4715 of 2012 (O&M) and
XOBJ-204-CII -2014
Date of Decision: 20.02.2018

Reliance General Insurance Company Ltd.Appellant

Vs.

Suman and othersRespondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Amit Singla, Advcate, for the
appellant/Insurance Company.

Mr.Narender Kaajla, Advocate, for the
cross-objectors/respondents No.1 to 5.

Mr.Parkash Mor, Advocate, for
respondents No.6 and 8.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the appellant/Insurance Company (for short 'the appellants'), against award dated 29.02.2012, passed by the learned Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal') vide which compensation to the tune of Rs.7,40,000/- was awarded to the claimants on account of death of Jagdish @ Dhamad in a motor vehicular accident.

FACTS NOT IN DISPUTE

On 11.04.2011, the deceased Jagdish @ Dhamad along with his brother Rajesh, Ramesh, Raj Kumar, Sandeep and Ramesh were going in car No.HR-20R/7980 which was driven by respondent No.1 i.e. Ramesh in a rash and negligent manner without adhering the traffic rules. When they reached near City College Arya Nagar at about 8:00 am, a tanker was coming from the opposite side and he crossed the car in questions, in the meantime a motorcycle was seen going ahead of the car, but due to rash and negligent driving the respondent No.1 could not control the above mentioned car and struck the window of the car with a tree on the side of Jagdish @ Dhamad, due to which Jagdish @ Dhamad received multiple

injuries and succumbed due to the injuries on the spot.

In the present case DDR was recorded and thereafter report was prepared by police under Section 174 Cr.P.C. (Ex.R-15) regarding the death of Jagdish @ Dhamad. PW-2 Raj Kumar has appeared and tendered his affidavit Ex.PW2/A stating therein that when he was travelling along with Jagdish @ Dhamad, Rajesh, Ramesh, Sandeep and Ramesh in a car No.HR-20R/7980 which was being driven by respondent No.1 in a rash and negligent manner and when a tanker was coming from the opposite side and it crossed the car in questions, meanwhile a cyclist was going ahead of the car but due to rash and negligent driving of the car by respondent No.1, he could not control the car. Due to which the care struck with a tree from the side of window on which side Jagdish @ Dhamad was sitting who received multiple injuries and died at the spot. The appellant/Insurance company is challenging the Award on this ground that the driver was not negligent as no FIR was register and there is no finding that accident took place on the rash and negligent driving of respondent No. The learned Tribunal has rightly examined this issue in view of the judgment **Chaman lal Vs. Anil Kumar and others 2007(2) LJR 645**, in which it consistently held that an animal suddenly came on the way of vehicle. Driver could not control or stop the vehicle, it means that he was not driving at a normal speed and was rash and negligent.

In the present case version given by PW-2 Raj Kumar that when a tanker was coming from the opposite side and it crossed the car in questions, meanwhile a cyclist was going ahead of the car but due to rash and negligent driving of the car by respondent No.1, he could not control the car. Hence, this finding is rightly recorded in favour of claimants and there is no need to interfere therein and present appeal filed by the appellant/Insurance Company is dismissed.

Learned counsel for the claimants has filed the cross objection against the same Award dated 29.02.2012 for enhancement of compensation awarded by the learned Tribunal.

COMPENSATION ASSESSED BY MACT

The Tribunal held that the deceased was 32 years old as per his

PMR and the claimants failed to produce on the record any documentary evidence regarding income of the deceased. The factum of accident had been proved and the offending vehicle was insured with respondent No.3- Insurance Company.

Sr.No.	Heads of compensation	Amount
1	Income	Rs.5000/-
2.	Deduction 1/4th	Rs.5000 --- Rs.1250= Rs.3750/-
3.	Annual loss of dependency after applying the multiplier	Rs.3750/- X 12 X 16=Rs.7,20,000/-
4.	Loss of consortium	Rs.10,000/-
5.	Loss of estate	Rs.5,000/-
6.	Funeral expenses	Rs.5,000/-
	Total	Rs.7,40,000/-

Learned counsel for the cross-objector contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced, in view of the judgment "**National Insurance Company Ltd. Vs. Pranay Sethi and others SLP(C) 25590 of 2014 decided on 31.10.2017.** On the other hand, the learned counsel for the appellant/Insurance Company has vehemently opposed the present appeal.

RE-ASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the record.

It is not in dispute that the offending vehicle was fully insured with the Insurance company. Following the ratio of law laid down by Hon'ble the Supreme Court in the above mentioned judgments, the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	Income	Rs.5000/-
2.	Future prospect 40%	Rs.5,000/- + Rs.2000/-= Rs.7000/-
2.	Deduction 1/4th	Rs.7000 --- Rs.1750= Rs.5250/-
3.	Annual loss of dependency after applying the multiplier	Rs.5250/- X 12 X 16=Rs.10,08,000/-

4.	Conventional heads	Rs.70,000/-
	Total	Rs.10,78,000/-
	Enhanced amount of compensation	Rs.10,78,000/- ---- Rs.7,40,000/- = Rs.3,38,000/-

Resultantly, the enhanced amount of compensation of Rs.3,38,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Shri Nagar Mal and Ors Vs. The Oriental Insurance Company Ltd. And ors. in Civil Appeal No.448 of 2018.** Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the cross-objection is allowed and appeal of the insurance Company is dismissed to the above extent.

(RITU BAHRI)
JUDGE

20.02.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No