

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.5570 of 2012 (O&M)
Date of decision:20.08.2018.

The New India Assurance Company Ltd.

...Appellant

Versus

Chanrama @ Chandrama Devi and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Raghujeet Singh Madan, Advocate for the appellant.

Mr. H.S. Bedi, Advocate for the respondents.

LISA GILL, J.

The appellant-New India Assurance Company Ltd. is aggrieved of award dated 17.07.2012 passed by the Motor Accident Claims Tribunal, Ludhiana ('Tribunal' for short).

Challenge in the appeal is only in respect to the quantum of compensation awarded to the claimants/respondents. Liability of the Insurance Company is not in dispute as challenge thereto is not raised by the appellant.

Learned counsel for the appellant argues that the age of the deceased was 61 years at the time of accident and not 50 as has been held by the learned Tribunal. Reference is made to the driving licence as well as ESI card of the deceased, which were taken on record by way of additional evidence vide order dated 08.10.2012. It is, thus, submitted that a multiplier of 7 instead of 13 has to be applied in this case. Learned counsel for the appellant, however, is unable to deny that compensation on the conventional heads is required to be reworked in terms of **National Insurance Company**

Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1099. It is, thus, prayed that the appeal be allowed.

Learned counsel for respondents No.1 to 5 while refuting the above said arguments submits that the age of the deceased was 50 years at the time of accident and not 61 as claimed by the appellant. A photocopy of the purported ration card as well as school leaving certificate of the deceased reflecting his date of birth to be 12.02.1960 is furnished in Court today. It is thus prayed that the present appeal be dismissed.

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

It is noticed that an application for additional evidence filed by the appellant was allowed by this Court on 08.10.2012. The documents i.e. the driving licence of the deceased (Annexure A1) and ESI Card of the deceased (Annexure A2) were taken on record by way of additional evidence. Respondents/claimants were duly served as reflected in order dated 01.03.2013. Order dated 08.10.2012 has not been challenged by the respondents/claimants nor any kind of objection has been raised on their behalf. It is noticed that the said respondents had been proceeded ex-parte on 31.07.2017. However, they were allowed to join the proceedings on 12.12.2017. A perusal of order dated 12.12.2017 passed in this case reveals that the school leaving certificate as well as ration card, as mentioned above, were furnished before this Court on 12.12.2017. Last opportunity was afforded to the claimants to file a specific affidavit after seeking instructions as to whether the ESI card (Annexure A2) pertains to the deceased, besides file certified copy of the certificate furnished before the court on that date. It was clearly observed that the same shall be the last opportunity.

Matter was adjourned to 26.01.2018. Appeal was again adjourned to 20.08.2018 on the request of learned counsel for respondents No.1 to 5. It was specifically mentioned in order dated 26.04.2018 that no further adjournment shall be afforded. It is relevant to note that the certified copies of the documents i.e. school leaving certificate and the purported ration card of the deceased along with an affidavit of the respondents have not been filed till date. Learned counsel for respondents No.1 to 5 seeks yet another opportunity to do the needful. The factual matrix of the case does not justify any further adjournments on this ground. Photocopy of the ration card furnished in court today does not even reflect the date of issuance of the ration card. Moreover, two other children of the deceased Surinder Kumar are mentioned in the said ration card, though they are not reflected to be the claimants before the Tribunal. Deceased was averred to be survived by his widow and four sons only. Furthermore, no affidavit of the claimants has been filed to dispute the authenticity of the driving licence or the ESI card produced by the appellant.

In this view of the matter, it is clear that age of the deceased was about 60-61 years at the time of accident which took place on 30.08.2011. Therefore, the multiplier of 7 has to be applied. Keeping in view the age of the deceased, the claimants are also not entitled to future prospects. However, in view of **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1099**, claimants are entitled to Rs.15,000/- each for the loss of estate besides Rs.40,000/- as funeral expenses to the claimant widow for loss of consortium. Thus, the claimants are entitled to compensation, which is as under: -

Sr.No.	Heads of Claim	Amount
1.	Income	5140/- p.m. i.e. 61,680/- per annum
2.	Income after deduction of 1/4 th on account of personal expenses	61,680—(61,680/ 1/4 th) = 46,260/-
2.	Total dependency after applying a multiplier of 7	(46,260x7) =3,23,820/-
5.	Loss of estate	15,000/-
6.	Loss of consortium to wife	40,000/-
7.	Loss of funeral	15,000/-
Grand Total		Rs.3,93,820/-

Execution of the awarded amount of compensation beyond Rs.3,50,000/- was stayed by this Court.

The unpaid amount of Rs.43,820/- (Rs.3,50,000-Rs.3,93,820/) shall carry interest at the rate of 8% per annum from the date of the application till realization.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the award dated 17.07.2012, this petition is disposed of.

(LISA GILL)
JUDGE

August 20, 2018
Ishwar

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No