

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

FAO-1284-2016 (O&M)
Date of decision: 26.04.2018

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD ... Appellant

Versus

DHARMO DEVI & ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. D.K. Prajapati, Advocate
for the appellant.

Mr. Sanjay Vashisth, Advocate
for respondents No.1 to 3.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 17.12.2015 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been assessed on account of death of Rajender Singh son of Hoshiyar Singh in a motor vehicular accident that took place on 12.02.2014.

The Tribunal has awarded compensation of Rs.8,87,800/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.8000/-
2. Multiplier	11
3. Deduction for personal expenses	1/3 rd
4. Loss of dependency	Rs.7,12,800/-
5. Loss of love and affection	Rs.1,00,000/-

6. Loss of consortium	Rs.25,000/-
7. Expenses on transportation and cremation	Rs.25,000/-
8. Loss of estate	Rs.25,000/-

Counsel for the insurance company has challenged the award primarily on two counts namely quantum of compensation assessed by the Tribunal and driver of the offending vehicle did not possess a valid licence. To assail compensation assessed by the Tribunal, it is argued that the Tribunal has assessed income of the deceased at Rs.8000/- per month but has not assigned any reason as to why claimants are entitled to more than minimum wage of an unskilled labour. Compensation awarded under conventional heads is liable to be restricted to Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.**

Counsel representing the claimants would argue that the deceased was working as Jamadar on a brick kiln at salary of Rs.25,000/- per month and income of the deceased may be assessed accordingly.

Dharmo Devi, widow of the deceased appeared in the witness box to say on oath that deceased was working on a brick kiln at salary of Rs.25,000/-. Her testimony, in this regard, does not find corroboration from independent source much less documents. Under the circumstances, bald assertion of the claimant is not sufficient to assess income of the deceased as claimed.

The claimants produced school certificate mark B issued by Government High School, Nimriwali, District Bhiwani. Taking a clue from

the minimum wage available at the relevant time coupled with educational qualification of the deceased, income of the deceased is assessed at Rs.6000/- per month. Claimants shall be entitled to addition in income for future prospects @ 10%. Deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.5,80,800/- (Rs.6000 x 12 x 11) + (10% future prospects) – (1/3rd deduction for personal expenses).

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that the claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.6,50,800/- and compensation awarded by the Tribunal is reduced to the extent of Rs.2,37,000/- (8,87,800 - 6,50,800).

The plea of the insurance company that driver of offending vehicle did not possess a valid licence has rightly been rejected by the Tribunal for want of adequate evidence. The insurance company did not examine a witness from the concerned licensing authority to prove any such report received under the RTI with an opportunity to the insured to challenge correctness thereof by way of cross-examination of the witness concerned. In this view of the matter, findings recorded by the Tribunal negating plea of the insurer qua the driving licence cannot be faulted with.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

The insurance company shall be entitled to recover the excess amount (if already paid) by filing an appropriate application before the Tribunal.

No order as to costs.

26.04.2018
ashok

(REKHA MITTAL)
JUDGE

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