

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

FAO-4096-2014 (O&M)

Date of decision: 21.08.2018

SUDESH KUMARI AND ORS

... Appellants

Versus

AKTAR LASKAR BARBHUIYA @ AKTAR HUSSEIN
BARBHUIYA AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Deepak Sharma, Advocate
for the appellants.

Mr. Man Mohan, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Surender Kumar in a motor vehicular accident that took place on the intervening night of 4/5.01.2010.

The Tribunal has awarded compensation of Rs.21,79,190/-,
detailed hereunder:-

1. Monthly income of the deceased	Rs.15,994/-
2. Multiplier	15
3. Deduction for personal expenses	1/4 th
4. Loss of dependency	Rs.21,59,190/-
5. Expenses on transportation and last rites	Rs.10,000/-

6. Loss of consortium Rs.10,000/-

The liability to pay compensation has been fastened upon the driver and registered owner of offending vehicle, Sumo Maxi Cab bearing registration No.AS-11AC-0933 and the insurance company has been exonerated of liability on the issue qua driving licence of driver of offending vehicle.

The deceased was an employee of Assam Rifles. Krishna Prashad Sharma PW1 proved salary certificate Ex.P1 and as per the salary certificate, gross pay of the deceased was Rs.15,994/- per month, taken into consideration for assessing loss of dependency. The deceased was 36 years old at the time of occurrence. Claimants shall be entitled to benefit of addition in income for future prospects @ 50%. Deduction for personal expenses and multiplier adopted by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.32,38,785/- $[(Rs.15,994 \times 12 \times 15) + (50\% \text{ future prospects}) - (1/4^{\text{th}} \text{ deduction for personal expenses})]$.

Under conventional heads, 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.33,08,785/- and the additional amount is Rs.11,29,595/- (33,08,785 - 21,79,190), payable with interest @7.5% per annum from the date of petition till realization, to minor

claimants Neha and Sandeep Kumar, to be shared in the ratio 30:70, to be invested in fixed deposit, payable on their attaining the age of majority or for a period of three years, whichever is later.

This brings the Court to findings of the Tribunal on issue No.3, reads as follows:-

Whether respondent No.3 is not liable to pay any compensation, in view of the breach of terms and conditions of the policy of insurance?OPR3

The driver and insured of the offending vehicle were proceeded against ex parte before the Tribunal. They did not produce driving licence possessed by Akhtar Laskar Barbhuiya, driver of the offending vehicle. Counsel for the claimants before the Tribunal produced report dated 28.04.2011 Ex.P13 obtained under Right to Information Act, 2005 and as per the report, the driver was authorised to drive LMV(NT), LMV(GV) and LMV(Cab) valid upto 11.11.2011. However, it has been noticed by the Tribunal that from the document Ex.P13, it cannot be ascertained as to the authority who issued the driving licence. Even if respondents No.1 and 2 before the Tribunal have failed to produce the driving licence for necessary verification by the insurance company, insurance company cannot escape liability to pay compensation to the claimants though it may be entitle to press for right of recovery against the insured. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425**. In this view of the matter, the insurance

company shall be liable to pay compensation to the claimants but would be entitle to have recovery right against the insured.

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

21.08.2018

ashok

(REKHA MITTAL)
JUDGE

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