

In the High Court of Punjab and Haryana at Chandigarh

FAO- 1539 of 2016(O&M)
Date of Decision:15.2.2018

The Oriental Insurance Company Limited

---Appellant

vs.

Smt. Ompati and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.C.Gupta, Advocate
for the appellant

Mr. Sachin Mittal, Advocate
for respondent Nos. 2 and 3

Rekha Mittal, J.

The present appeal filed by the Oriental Insurance Company Limited directs challenge against award dated 2.1.2016 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short “the Tribunal”) whereby compensation has been awarded on account of death of Pardeep Kumar, son of claimant Smt. Ompati.

The Tribunal has awarded compensation of Rs. 13,37,200/-, detailed hereunder:-

Monthly income of the deceased	Rs. 8100/-
Addition in income for future prospects	50%
Multiplier	18
Deduction for personal expenses	50%
Loss of dependency	6075X12x18=Rs.13,12,200/-
Expenses on funeral and transportation	Rs. 25000/-

Counsel for the appellant has submitted that Pardeep Kumar initially sustained injuries on 17.1.2015 when his motor cycle was hit by a tractor-trolley. On 18.1.2015, while the injured was being taken to PGI, Chandigarh in Ambulance bearing No. HR-64-4719, there was an accident because of the alleged rash and negligent driving of Mahindra Bolero Pick-up bearing registration No. UP-11AT-0547. According to counsel, as the injured sustained injuries in the occurrence dated 17.1.2015 and was in the process of being shifted to PGI, Chandigarh for his treatment, death of Pardeep Kumar cannot be attributed to sole rash and negligent driving of Mahindra Bolero Pick-up.

To assail quantum of compensation assessed by the Tribunal, it is argued that the Tribunal has assessed income of the deceased at Rs. 8100/- per month but the minimum wage fixed by the State of Haryana and available at the relevant time was Rs. 5812.75P. Benefit of increase in income for future prospects is liable to be restricted to 40% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270.**

Another submission made by counsel is that as owner of the vehicle did not produce permit for verification by the insurance company, the insurance company is entitled to recovery right against the insured after indemnifying the claimant. With regard to rate of interest, it is argued that the Tribunal has allowed interest at the rate of 9% per annum which is on higher side.

There is no representation on behalf of the claimant who failed to cause appearance despite service.

Counsel representing respondents No. 2 and 3 while refuting contention of counsel for the insurance company with regard to grant of recovery right has submitted that the insurance company did not raise an issue that the offending vehicle was being plied without permit.

Perusal of averments raised in para 2 of the award would indicate that initially Pardeep Kumar sustained injuries in a motor vehicular accident that took place on 17.1.2015. He was being shifted to PGI, Chandigarh from Saha Hospital, Kaithal. The present occurrence took place when the injured was being shifted in Ambulance No. HR-64-4719 driven by Mehar Chand. The accident caused due to rash and negligent driving of Mahindra Bolero Pick-up became the immediate cause of death of Pardeep Kumar. Under the circumstances, driver, owner and insurer of the said vehicle cannot escape their liability to pay compensation for death of Pardeep Kumar.

The Tribunal has assessed income of the deceased on the basis of wage fixed by the Deputy Commissioner, Kurukshetra vide order dated 1.7.2014. However, the minimum wage fixed by the State of Haryana and available at the relevant time was Rs. 5812.75P per month. The DC rates are available for giving employment in different government departments on daily wage basis or may be ad hoc basis. Under the circumstances, in view of minimum wage available at the relevant time, income of the deceased is assessed at Rs. 5850/- per month. The claimant shall be entitled to benefit of increase in income for future prospects @ 40%. The multiplier and deduction for personal expenses applied by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs. (5850x12x18) Rs.12,63,600 +

$5,05,440(40\%) = 17,69,040 - 8,84,520(50\%) = \text{Rs. } 8,84,520/-$.

Under conventional heads, claimant shall be entitled to Rs. 30,000/- i.e. Rs. 15,000/- for expenses on funeral and Rs. 15,000/- for loss of estate. Total compensation comes to Rs.9,14,520/-. Compensation assessed by the Tribunal is reduced to Rs. 4,22,680/-(13,37,200 – 9,14,520).

The Tribunal has awarded interest at the rate of 9% per annum. Counsel for the appellant has not produced any document with regard to the interest paid by the banks on FDRs at the relevant time. In these circumstances, I do not find any reason to interfere in the rate of interest assessed by the Tribunal. The rate at which interest is allowed cannot be said to be exorbitant warranting intervention by this Court. In this context, reference can be made to latest judgment of Hon'ble the Apex Court **Sandhya Rani Debbarma and others vs. National Insurance Co. Ltd. and another, 2016 (4) RCR (Civil) 465** wherein it has been held as under:-

“This amount is payable by the respondents to the appellants, not at rate of 6% interest per annum as the learned single judge has held, but at the rate of 9% per annum, according to the principle laid down by this Court in the case of **Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors, 2012 (3) RCR (Civil) 203.**”

The plea raised by counsel for the insurance company with regard to the vehicle being plied without a permit cannot be entertained much less accepted as no such factual controversy was raised by the insurance company in its reply to the petition. Rather plea raised by the insurance company was that the vehicle was being plied without a route

permit. As per the settled position in law, non-possessing of a route permit or deviation from the route does not constitute a defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988.

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

(Rekha Mittal)
Judge

15.2.2018
paramjit

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