

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 1734 of 2016(O&M)

Date of Decision:26.3.2018

The Oriental Insurance Company Limited

---Appellant

vs.

Rajni and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ram Avtar, Advocate
for the appellant
Mr. Ashish Gupta, Advocate as guardian ad litem
for respondent Nos. 2 and 5

Rekha Mittal, J.

CM No.6502-CII of 2016

Prayer in this application is for condoning delay of 7 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 7 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 1734 of 2016

Claimants are in appeal seeking enhancement of compensation on account of death of Pawan Kumar in a motor vehicular accident that took place on 8.9.2014.

The Motor Accidents Claims Tribunal, Kurukshetra (in short "the

Tribunal”) has awarded compensation of Rs. 23,34,052/-, detailed hereunder:-

Monthly income of the deceased	Rs. 8100/-
Multiplier	17
Deduction for personal expenses	1/4 th
Increase in income for future prospects	50%
Loss of dependency	Rs. 18,59,052/-
Transportation of dead body, funeral and last rites	Rs. 25,000/-
Loss of consortium to claimant No. 1	Rs. 1,00,000/-
Loss of estate to claimants No. 1 to 3 and 5	Rs. 1,00,000/-
Loss of love and affection to claimants No. 2 and 5	Rs. 1,00,000/- each
Loss of love and affection to claimant No. 3	Rs. 50,000/-

Counsel for the insurance company would argue that the Tribunal while deciding issues No. 1 to 3, taken up jointly, has held that Pawan Kumar died due to injuries sustained in the accident caused by labour/employees of M/s Kawatra Steel Trader, Shahbad and rash and negligent driving of bus bearing No. HR-65-7109 by respondent No. 1. Respondent No. 1 to 5, driver, owner and insurer of the aforesaid bus have been held jointly and severally liable to pay compensation with costs and interest. However, respondent Nos. 1 to 5 have been left at liberty to sue other joint tort feasons namely the owner and labour/employees of M/s Kawatra Steel Trader, Shahbad for determination of extent of composite negligence and apportionment and recovery of proportionate compensation in independent proceedings. It is argued with vehemence that as the Tribunal has attributed composite negligence to labour/employees of M/s Kawatra Steel Trader, Shahbad, the owner of the offending bus or the insurer of the bus cannot be held liable to pay entire compensation.

To challenge quantum of compensation assessed by the Tribunal, counsel has two fold submissions to make. It is argued that the Tribunal has assessed income of the deceased on the basis of minimum wage of unskilled

labour notified by the Deputy Commissioner, Kurukshetra vide order dated 1.7.2014. According to counsel, minimum wage at Deputy Commissioner's rate is available to employees engaged by the Government or its departments to meet contingency. It is further argued that in absence of clear and cogent evidence with regard to income of the deceased, Tribunal should have relied upon minimum wage fixed by the State of Haryana and available at the relevant time for computing loss of dependency.

Another submission made by counsel is that the Tribunal has allowed benefit of increase in income for future prospects @ 50% but the same should be 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**. Compensation awarded under conventional heads needs to be restricted to Rs. 70,000/- in the light of aforesaid judgment.

Counsel representing respondent Nos. 2 and 5 (appointed as guardian ad litem for the minors) has supported findings of the Tribunal holding respondents No. 1 to 5 before the Tribunal being jointly and severally liable to pay compensation with the plea that in case of an accident being the result of composite negligence, victim(s) has the option to sue either of the joint tortfeasors for claiming compensation. He has supported assessment of compensation qua loss of dependency with further plea that compensation awarded under conventional heads may be allowed in the light of latest judgment referred to by counsel for the insurance company.

The Tribunal, in para 18 of the award, has held that the claimants produced cogent and reliable evidence to establish that Pawan Kumar died due to injuries sustained in the occurrence caused by negligence of labour/employees of M/s Kawatra Steel Trader, Shahbad and rash and negligent driving by Mani Singh, respondent No. 1. As per the settled position in law, if an accident is the result of composite negligence of joint tortfeasors, victim is left at liberty to sue

either of the tortfeasors for claiming compensation. In the given scenario, insurance company cannot be head to say that since the claimants did not implead the representatives of M/s Kawatra Steel Trader, Shahbad in the proceedings before the Tribunal, driver, owner and insurer of the offending bus can not be fastened with liability to pay entire compensation. In this view of the matter, findings recorded by the Tribunal holding respondents No. 1 to 5 therein, to be jointly and severally liable to pay compensation cannot be faulted with.

The Tribunal has assessed income of the deceased at Rs. 8100/- per month on the basis of Deputy Commissioner's rates. As has been rightly argued by counsel for the insurance company, rates fixed by the Deputy Commissioner are meant for persons employed in Government departments on ad hoc basis etc. Taking into consideration minimum wage fixed by the State of Haryana and available at the relevant time, income of the deceased is assessed at Rs. 5650/- per month. Claimants shall be entitled to benefit of future prospects @ 40%. Deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs. $5650 \times 12 \times 17 = 11,52,600 + 4,61,040(40\%) = 16,13,640 - 4,03,410(1/4^{\text{th}}) = 12,10,230/-$.

Under conventional heads, claimants shall be entitled to following compensation in the light of **Pranay Sethi and others' case (supra)**, detailed hereunder:-

Loss of consortium to widow	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 12,80,230/-. Compensation awarded by the Tribunal is reduced to the extent of Rs. 10,53,822/-(23,34,052-12,80,230). The insurance company shall be entitled to recover the excess amount, if already paid,

by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

26.3.2018.

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Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No