

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

F.A.O No. 5310 of 2014

Date of decision:- 26.04.2018

National Insurance Co. Ltd.

...Appellant

Versus

Pawan Kumar and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Naveen Chopra, Advocate
for the appellant

Mr. Surinder Gaur, Advocate
for respondent No. 1.

Mr. Rahul Vats, Advocate
for respondent No. 2

Mr. D.K. Prajapati, Advocate for Mr. R.S. Madan, Advocate
for respondent No. 4

RITU BAHRI J. (Oral)

The present appeal has been preferred by the Insurance Company-appellant, seeking modification of the award passed by the learned Motor Accident Claims Tribunal, Sonapat (for short, 'the Tribunal') to the tune of Rs.18,50,000/-, vide impugned award dated 18.04.2014 in a claim petition filed under Section 166 of the Motor Vehicles Act (for short 'the Act').

Learned counsel for the parties are not in dispute with regard to finding on issue No. 1 that the accident had been occurred due to rash and negligent driving of respondent No. 1.

Learned counsel for the appellant-Insurance Company is challenging the award on two grounds firstly that the brother of the deceased cannot be considered as dependents upon the deceased and

secondly, the Tribunal has wrongly taken the dependency of 1/3rd instead of 1/2 as the deceased was a bachelor.

With regard to the first argument that the brother cannot be considered as dependent upon the deceased, reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Mrs. Hafizun Begum vs. Md. Ikram Heque and others, 2007(3) R.C.R (Civil) 691*** wherein Hon'ble the Supreme Court has held that a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

Reference at this stage can further be made to judgment of this Court in a case of ***Jyoti Prakash vs. General Manager, Haryana Roadways, Sirsa and others, 2017(3) RCR (Civil) 90*** and judgment of Madras High Court in a case of ***Mariyae and others vs. Pappammal and others, 2006(2) T.N.M.A.C 145*** wherein it has been held it is irrelevant whether the claimants who are sons and daughters of their deceased mother, are major and dependent on their mother and father. It is not merely the class of dependents who are entitled to get compensation.

However, the learned Tribunal has wrongly taken the dependency of 1/3rd instead of 1/2 and future prospects of 50% is also on the higher side, which needs to be clarified in view of recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017***

The compensation also requires to be modified and it is re-assessed as under:-

RE-ASSESSED COMPENSATION

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Income	Rs.10,000/- per month
(ii)	40% of (i) above to be added as future prospects=	Rs.10000+Rs.4000=Rs.14,000/-
(vii)	1/2 deducted as personal expenses of the deceased=	Rs.14000-7000=Rs.7000/-
(viii)	Compensation after multiplier of 15 is applied	Rs.7000 X 12 X 15= Rs.12,60,000/-
(ix)	Conventional heads (loss of estate and funeral expenses)	Rs.30,000/-
(x)	Total compensation to be awarded now	Rs.12,90,000/-

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed. However, the appellant is directed to disburse the compensation amount of Rs.12,90,000/- to the claimant within a period of four weeks from the date of receipt of certified copy of this order and inform this court. The claimant shall also get interest @ 7.5% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of *Shri Nagar Mal and ors vs. The Oriental Insurance Co. Ltd and others, passed in Civil Appeal No. 448-2018., decided on 19.01.2018.* The remaining conditions of disbursal of amount and recovery rights shall remain unaltered. Further it is hereby directed that the amount of Rs.25,000/- deposited by the appellant at the time of filing of appeal, vide receipt No. 07258 dated 10.06.2014 in the Registry of this Court be returned.

26.04.2018
G Arora

Whether speaking/reasoned
Whether reportable

Yes
No

(RITU BAHRI)
JUDGE