

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

FAO No.4294 of 2015(O&M)

Date of decision: 9.1.2018

New India Assurance Co. Ltd.

.....Appellant

VERSUS

Santosh Devi and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Ms. Bhagyashree, Advocate for respondents No.1 to 6.

Mr. Bhupander Ghanghas, Advocate for respondent No.7.

Mr. Vishal Kashyap, AAG, Haryana for respondent No.8.

REKHA MITTAL, J.

The present appeal directs challenge against award dated 01.04.2015 passed by the Motor Accidents Claims Tribunal, Bhiwani (in short 'the Tribunal') in regard to death of Rajbir in a motor vehicular accident that took place on 21.02.2012.

The Tribunal has awarded compensation to the tune of Rs.48,22,262/- detailed hereunder:-

Monthly income of the deceased	Rs.28,228/-
Addition in income for future prospects	30%
Deduction for personal expenses	1/4 th
Multiplier	14
Loss of dependency	Rs.47,42,262/-

Loss of consortium	Rs.10,000/-
Loss of love and affection to minor children	Rs.40,000/-
Funeral expenses	Rs.25,000/-
Loss to estate	Rs.5,000/-

Counsel for the appellant-Insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on issue No.1 *“Whether accident took place on 24.02.2012 due to rash and negligent driving of bus bearing registration No.HR-61-4447 by respondent No.1 Ramesh Sangwan which resulted death of Rajbir and damage to car bearing registration No.RJ-18C-5163? OPP”* and quantum of compensation awarded to the claimants.

To challenge findings on issue No.1, it is argued that Mahender Singh son of Sh. Birbal, brother of deceased and an alleged eye-witness to the occurrence tendered into evidence affidavit Ex.PW1/A by way of examination in chief. In his cross examination, he has admitted that the photographs Ex.R1 and R2 pertain to the same accident. He further deposed that as he was perplexed at that time, he was not in a position to see in which side the accident had taken place. It is further argued that perusal of the photographs Ex.R1 and R2 would clearly indicate that the accident was a head-on collision between bus and the car and the bus is shown to be standing on its extreme left side whereas the car has diverted from its side towards right side. According to counsel, as per statement of Mahender, two vehicles can simultaneously pass through in view of width of the road at the place of occurrence. In the photographs, it

is amply clear that sufficient space is available on the road for the vehicle going from Loharu to Pilani side.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1 with the submission that driver of the offending vehicle was put to trial for causing the accident on the basis of FIR No.51 dated 22.02.2012 for offence under Sections 279, 304-A, 427 IPC lodged in Police Station Loharu District Bhiwani.

With regard to quantum of compensation, it is argued that the Tribunal has not deducted income tax liability while computing loss of dependency. Compensation awarded under conventional heads needs modification in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.**

Counsel for the claimants has submitted that the Tribunal has wrongly applied multiplier of 11 in place of admissible multiplier of 14.

I have heard counsel for the parties, perused the paper-book and the records.

Mahender PW-1 is the brother of deceased Rajbir and in his affidavit tendered by way of examination in chief, he has reiterated the version given in the petition. A relevant extract from his testimony reads as follows:-

“...the deponent was awaiting of his brother Sh. Rajbir Singh on Uun Farm House, Pilani Road, Loharu at about 6.00/6.30 PM. In the meantime a Haryana Roadways (Dadri Depot) Bus bearing registration No.HR-61-4447 being driven by its

driver i.e. respondent No.1 at a very fast speed and in a rash and negligent manner, came from Pilani side and struck against a car No.RJ-18C-5163 which was coming from opposite side and when the deponent saw after going near the car and bus and it was found that said car was being driven by his brother at a moderate speed. Said Rajbir received severe injuries on various parts of his body including head & chest and died at the spot due to injuries sustained by him.”

As has been rightly pointed out by counsel for the insurance company, the witness has admitted that photographs Ex.R1 and R2 pertain to the accident. A relevant extract from his cross examination reads as follows:-

“....The accident was a head on collision. The photographs have been seen by me relates to the very same accident which are Ex.R1 and Ex.R2. Self stated that I was perplexed at that time as such I was not in a position to see in which side the accident had taken place.”

The witness has admitted correctness of the photographs Ex.R1 and R2. He even voluntarily stated that as he was perplexed, he was not in a position to see in which side the accident had taken place. However, it has been admitted by him that the accident was head on collision. Perusal of the photographs Ex.R1 and R2 leaves no manner of doubt that the occurrence was a head on collision between the bus and the car. Photograph Ex.R2 further shows that the car had diverted from its side towards the other side and as a result it had gone towards the side

meant for the vehicles going from Pilani to Loharu side. At the same time, the offending bus is a Heavy Motor Vehicle and driver of the vehicle had a greater responsibility to ensure that the light motor vehicles and two-wheelers on the road are not caused any harm. There is nothing on record suggestive of the fact as to what precaution was taken by driver of the alleged offending bus in order to avoid collision. Under the circumstances, it can be safely held that the present is a case of contributory negligence of both the vehicles involved in the occurrence. Taking into consideration the accident being head on collision coupled with the scene of accident captured in the photographs, drivers of both the vehicles are held responsible for causing the accident to the extent of 50% each. That being so, findings of the Tribunal on issue No.1 attributing exclusive negligence to driver of the offending bus are liable to be modified in the aforesaid terms and ordered accordingly.

This brings the Court to quantum of compensation assessed by the Tribunal. The deceased was an employee of the State of Haryana. As per his salary, he was liable to pay income tax to the tune of Rs.15,874/- per annum. The Tribunal has rightly allowed addition in income for future prospects and deduction for personal expenses. As the deceased was 43 years old, admissible multiplier would be 14. Annual income after deducting income tax comes to Rs.3,22,862/- In this manner, loss of dependency comes to Rs.44,07,066/- [Rs.4520068/- (Rs.322862 x 14) + Rs.13,56,020/- (30% towards future prospects) – Rs. 14,69,022/- (1/4th deduction towards personal expenses)].

Under conventional heads, the Tribunal has allowed more than what is admissible in the light of judgment in **Pranay Sethi's case** (supra). The claimants shall be entitled to following compensation under conventional heads:-

Loss of consortium	Rs.40,000/-
Funeral expenses/last rites	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.44,77,066/-. As such, compensation awarded by the Tribunal is reduced to the extent of Rs.3,45,196/- (Rs.48,22,262/- - Rs.44,77,066/-). However, the claimants shall be entitled to receive only 50% of compensation assessed by this Court. The insurance company can recover the amount in excess, if already paid, by filing an appropriate application before the Tribunal.

The appeal is disposed of in the aforesaid terms.

JANUARY 9, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no