

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

-.-

Cross objection No. 266 CII of 2016 in/and
FAO 4167 of 2016 (O&M)

Date of decision: 25.07.2018

The New India Assurance Co Limited

..... Appellant

Versus

Smt. Bala Devi and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Vinod Gupta, Advocate
for the appellant

Mr. Saurabh Kapoor, Advocate,
for the claimants/cross objectors

Mr. Pawan Kumar Jangra, Advocate
Additional Advocate General, Haryana
respondent No. 5 to 7

-.-

Rekha Mittal, J. (Oral)

CM 22624-CII of 2016 in Cross Objection 266 CII of 2016 in
FAO No. 4167 of 2016

Prayer in this application is for condonation of delay of 44 days
in filing the cross objections.

In view of averments made in the application supported by an
affidavit of one of the applicants and arguments advanced, the application is
allowed and delay of 44 days in filing the cross objections stands condoned.

Main case

This order will dispose of aforesaid appeal and cross
objections as these have emerged out of the same award dated 21.03.2016
passed by the Motor Accidents Claims Tribunal, Kurukshetra (hereinafter to
be referred as 'the Tribunal') whereby compensation has been allowed on
account of death of Thakur Singh in a motor vehicular accident that took

place on 28.04.2015.

The appeal has been filed by the insurance company whereas cross objections have been filed by the claimants/cross objectors seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been preferred only to challenge quantum of compensation assessed by the Tribunal.

The Tribunal has allowed compensation of Rs.10,44,560.00, detailed hereunder:-

Monthly income of the deceased	Rs.10,200.00
Increase in income for future prospects	15%
Deduction for personal expenses	1/3 rd
Multiplier	9
Loss of dependency	Rs.8,44,560.00
Loss of consortium	Rs.1,00,000.00
Loss of care and guidance	Rs.1,00,000.00
Funeral expenses	Rs.25,000.00

The Tribunal has assessed income of the deceased on the basis of notification dated 20.02.2015 issued by the Deputy Commissioner, Kurukshetra wherein average income of an unskilled labour with effect from 01.03.2015 to 29.02.2016 has been fixed to be Rs.10,200.00.

The plea raised by the claimants that the deceased was earning Rs.25,000.00 per month from barber shop being running under the name and style of Thakur Hair Saloon is not tenable as no evidence qua income has been led by the claimants. The Tribunal has wrongly assessed income of the deceased at Rs.10,200.00 per month on the basis of DC rates, meant for employees paid out of contingency. When the case is examined in the light of notification issued by the State of Haryana, fixing minimum wage at

the relevant time, income of deceased is assessed at Rs.6,500.00 per month. As the deceased was more than 60 years old at the time of occurrence, no addition in income qua future prospects is admissible. Multiplier and deduction for personal expenses allowed by the Tribunal are correct and affirmed. In this view of the matter, loss of dependency comes to Rs.4,68,000.00 (Rs.7,02,000.00 *i.e.* 6,500 x 12 x 9 – Rs.2,34,000.00 (1/3rd deduction))

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitled to Rs.70,000.00, in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270***, detailed hereunder:-

Loss of consortium to widow	Rs.40,000.00
Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation comes to Rs.5,38,000.00 (Rs.4,68,000.00 + Rs.70,000.00) and compensation is reduced to the extent Rs.5,06,560.00 (Rs.10,44,560.00 - Rs.5,38,000.00). The Insurance company shall recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

In view of the above, the appeal filed by the insurance company is partly allowed in the aforesaid terms. However, cross objections filed by the claimants are dismissed.

(Rekha Mittal)
Judge

25.07.2018
mohan bimbra

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