

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

317 (2 cases)

Date of Decision : 10.12.2018

1) FAO No.587 of 2015 (O&M)

New India Assurance Co. Ltd.

..... Appellant

Versus

Amarjeet Singh and others

.... Respondents

2) FAO No.597 of 2015 (O&M)

New India Assurance Co. Ltd.

..... Appellant

Versus

Smt. Meena Devi and others

.... Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI**

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Present: Mr. Rajneesh Malhotra, Advocate  
for the appellant.

Mr. S.S. Momi, Advocate  
for respondent No.1 (FAO-587-2015)  
for respondents No.1 to 7 (FAO-597-2015)

None for other respondents.

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**AJAY TEWARI, J. (ORAL)**

The appeal bearing FAO No.587 of 2015 has been filed by the insurance company against the award dated 15.09.2014 awarding compensation of Rs.2,39,500/- alongwith interest @ 7.5% p.a. on account of

injuries suffered by the respondent No.1 in a motor accident which took place on 15.07.2013.

The appeal bearing FAO No.597 of 2015 has been filed by the insurance company against the award dated 15.09.2014 awarding compensation of Rs.13,87,728/- alongwith interest @ 7.5% p.a. on account of death of Satish Kumar @ Kadar Khan in a motor accident which took place on 15.07.2013.

Since only limited points have been urged further detailed reference to the facts is not required.

As regards appeal bearing FAO No.587 of 2015, counsel for the appellant has argued that once it was a head-on collision, there had to be some contributory negligence. Counsel for the respondent No.1 states that every head-on collision does not necessarily mean contributory negligence. He has relied upon the testimony of injured PW-4 Amarjeet Singh as per whom when the accident had taken place the motorcycle was on the correct side. In the circumstances, the contention regarding contributory negligence is rejected.

No other argument has been raised by the counsel for the appellant.

Appeal bearing FAO No.587 of 2015 is dismissed.

As regards appeal bearing FAO No.597 of 2015, counsel for the appellant has argued that excluding the father there were six claimants and therefore deduction could only have been 1/4<sup>th</sup> and not 1/5<sup>th</sup>. Counsel for the respondent No.1 to 7 is not in a position to deny this fact.

Consequently, I hold that deduction of 1/4<sup>th</sup> should be applied.

Counsel for the appellant has further argued that the future prospects had to be 25% instead of 30% in view of the judgment of the Supreme Court in *National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009*. Counsel for the respondents No.1 to 7 has accepted this fact. Consequently, I reduce the future prospects to 25%.

Counsel for the respondent Nos.1 to 7, however, points out that under the conventional heads only an amount of Rs.2,25,000/- has been awarded whereas it should have been Rs.2,70,000/- i.e. Rs.40,000/- each to respondents No.1 to 5 and 7 for consortium/filial consortium as per the judgment of the Supreme Court passed in *Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., 2018(4) RCR (Civil) 333 and Pranay Sethi's case (supra)* and Rs.30,000/- for funeral expenses and loss of estate. Counsel for the appellant is not in a position to deny this fact. Consequently, I award Rs.45,000/- more under the conventional heads.

Counsel for the respondents No.1 to 7 further points out that the Tribunal erred in granting only 7.5% interest and in view of the judgment of the Supreme Court in *Magma General Insurance Company Ltd.'s case (supra)*, the interest should have been 12%. Counsel for the appellant is not in a position to deny this fact. Consequently, I award interest @ 12% p.a. on the enhanced amount from the date of filing of the claim petition till the date of realization. Apart from the individual amounts awarded, the apportionment and management would be as per the direction of the Tribunal. Rest of the award shall remain same.

Appeal bearing FAO No.597 of 2015 stands disposed of.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

**December 10, 2018**  
*ashish*

**( AJAY TEWARI )**  
**JUDGE**

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | - | Yes/No |
| Whether reportable        | - | Yes/No |