

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

FAO No.7964 of 2014 (O&M)

Date of Decision: 18.04.2018

Sunita Devi and others

.....Appellants

Vs.

Raj Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Vivek Kumar, Advocate, for the appellants.

Mr.Rajesh Bansal, Advocate, for respondent No.3.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against award dated 19.09.2013, passed by the learned Motor Accident Claims Tribunal, Palwal (for short, 'the Tribunal') vide which compensation to the tune of 4,31,900/- was awarded to the claimants on account of death of Vimal Kumar in a motor vehicular accident.

FACTS NOT IN DISPUTE

On 24.06.2011, Vimal Kumar, since deceased as pillion rider on motorcycle bearing registration No.HR-36-P-7570 was coming from Sohana to his village Allika being driven by respondent No.1 in a moderate speed and his correct left side and when reached near Gonchhi Drain village Dhatir on Sohna Palwal Road, a wild cattle (neel cow) came in from of them and struck against their motor-cycle. As a result thereof, deceased fell down on the road alongwith it and sustained multiple grievous injuries resulting into his death on the way to General Hospital, Palwal. A DDR No.7 was registered at Police Post Dhatir falling within the jurisdiction of Police Station Sadar in respect of this accident.

COMPENSATION ASSESSED BY MACT

The Tribunal held that the deceased was 28 years old at the time of his death in the accident. Since the claim petition was filed under Section

163A of the Motor Vehicles Act and keeping in view the DDR No.7 and the factum of accident had been proved and the offending vehicle was insured with respondent No.3-Insurance Company, the claim petition of the appellant was allowed and compensation has been assessed as per second clause of the Motor Vehicles Act which is as under:

Sr.No.	Heads of compensation	Amount
1	Income	Rs.3,300/- per month
2.	Deduction 1/3rd	Rs.3,300/- --- Rs.1100/=- Rs.2200/-
3.	Total loss of dependency after applying the multiplier 16	Rs.2200 X 16 X 12= Rs.4,22,400/-
4.	Funeral expenses	Rs.2,000/-
5.	Consortium	Rs.5,000/-
6.	Loss of estate	Rs.25,00/-
	Total	Rs.4,31,900/-

In the present case, petitioner has filed CM No.21425-CII of 2014 with the prayer for amendment of the claim petition filed under Section 163-A to the claim petition under Section 166 of the Motor Vehicle Act. Learned counsel for the applicant/appellants submits that accident had taken place as driver dashed against an animal and pillion rider died. The driver of the vehicle had been negligent in not being tactful to avoid hitting cattle and DDR in this respect has been lodged. Respondent No.1 Raj Kumar while appearing as RW-1 admitted the date, time and place and manner of accident and keeping in view the DDR No.7, the case of death in an accident was not dispute by the Insurance Company as well and the compensation was assessed as per second clause of the schedule of the Motor Vehicles Act.

Since the case of accident was not disputed by the parties, the present application i.e. CM No.21425-CII of 2014 filed under Order 6 Rule 17 read with Section 151 CPC has to be allowed as Co-ordinate Bench in the case of **Sudesh Sharma and others Vs. Prahalad Kumar Garg and another** passed in FAO No.2492 of 2002 wherein, the deceased who was a passenger in a car when the driver drove against a tree and killed the passenger and with regard to claim of compensation, claim petition filed under Section 163A was converted into Section 166 with the observation that defences are always be confined to what is set forth under section 149 of

the Motor Vehicles Act. It shall also become possible apart from the defences available under Section 149 to plead jurisdictional issues regarding maintainability of petitions or non-involvement of vehicles. A conversion of an application under Section 163-A to 166 cannot be resisted by an insurer on a plead that such a conversion would result in undertaking a larger slice of liability if the negligence is established and this application was allowed.

Learned counsel for the respondent-Insurance Company has referred to the judgment in the case of **Deepal Girishbhai soni and others Vs. United India Insurance Company Ltd. Baroda 2004(2) RCR (Civil) 466**, wherein, it is held that remedy under no fault liability prescribed under Section 163-A is an independent and complete in itself. In the present case, the cited judgment is not applicable to the facts of the present case as claimant is not required to prove the negligence on the part of the driver of the offending vehicle.

In view of the above, present application is allowed and the present claim petition filed under Section 163-A is converted into a petition under Section 166 of the Motor Vehicles Act.

Learned counsel for the claimant-appellants contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced, in view of the judgment "**National Insurance Company Ltd. Vs. Pranay Sethi and others SLP(C) 25590 of 2014 decided on 31.10.2017**". On the other hand, the learned counsel for the respondents have vehemently opposed the present appeal.

RE-ASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the record.

It is not in dispute that the offending vehicle was fully insured with the Insurance company. Following the ratio of law laid down by Hon'ble the Supreme Court in the above mentioned judgment, the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	Income as per minimum wages	Rs.5,000/- per month
2.	Future prospect 40%	Rs.5,000/- + Rs.2,000/-= Rs.7,000/-

3.	Deduction 1/3 rd (Rs.2333 rounded off Rs.2300/-)	Rs.7,000/- ---Rs.2300/-= Rs.4700/-
4.	Total loss of dependency after applying multiplier	Rs.4700/- X 12 X 17= Rs.9,58,800/-
5.	Conventional Heads	Rs.70,000/-
	Total	Rs.10,28,800/-
	Enhanced amount of compensation	Rs.10,28,800/- ---- Rs.4,31,900/-= Rs.5,96,900/-

Resultantly, the enhanced amount of compensation of Rs.5,96,900/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Shri Nagar Mal and Ors. Vs. The Oriental Insurance Company Limited and Others passed in Civil Appeal No.448 of 2018**. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

18.04.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No