

***FAO No.599 of 2016 and
Cross-objection No.233-CII of 2016***

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

**FAO No.599 of 2016 and
Cross-objection No.233-CII of 2016
Date of decision: 09.05.2018**

Cholamandalam Ms General Insurance Company Limited
....Appellant

Versus

Shokin and others
....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Vandana Malhotra, Advocate,
for the appellant-Insurance Company.

Mr. S.K. Bawa, Advocate,
for respondent Nos.1 to 6-cross objectors.

Mr. Shashikant Gupta, Advocate,
for respondent No.8.

RITU BAHRI J. (Oral)

Cholamandlam Ms General Insurance Company Limited-appellant has filed this appeal (FAO No.599 of 2016) against the award dated 23.09.2015 passed by the Motor Accident Claims Tribunal, Mewat (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.27,20,000/- has been awarded in favour of the claimants-respondent Nos. 1 to 6 on account of death of Nasrin @ Nasri in a motor vehicular accident which took place on 06.01.2015. Respondent No. 1 is husband and respondent Nos. 2 to 6 are children of deceased Nasrin @ Nasri.

On the other hand, cross objectors-respondent Nos.1 to 6

(claimants) have filed Cross Objection No.233-CII of 2016 seeking enhancement of compensation awarded by the Tribunal vide aforesaid Award dated 23.09.2015.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 06.01.2015, Fajru along with his wife Maujbi, his son's wife Nasrin @ Nasri (since deceased) and other daughter-in-law namely Shahnaz was going to village Sancholi in a three-wheeler bearing temporary No. HR-99-IVGT-5840. The said three-wheeler was being driven by Farukh. At about 1.30 P.M., when they reached near Shikarpur Colony, Sohna road, one trolly bearing registration No.RJ-32-GB-0238 being driven by Rajinder-respondent No.7 (respondent No.1 in claim petition) in a rash and negligent manner, came from behind and struck against the three-wheeler, as a result of which, Nasrin @ Nasri received injuries and died at the spot. With regard to the accident, FIR Ex.P7 was registered against the driver of offending vehicle. Consequently, claimants-respondent Nos. 1 to 6 filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question resulting into the death of Nasrin @ Nasri had taken place due to the rash and negligent driving of the offending vehicle by its driver-respondent No.7 (respondent No.1 in claim petition) and thus, returned finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Fajru (PW-1), who was the eye witness of the accident. Claimants have further proved on record copy of report under Section 173 Cr.P.C. Ex.P1, postmortem report

Ex.P2, copy of FIR Ex.P7.

Deceased-Nasrin @ Nasri was a housewife. Her income was taken by the Tribunal as Rs.10,000/- per month i.e. Rs.1,20,000/- per annum. In this income, 50% addition was made on account of future prospects. By doing so, total annual income of the deceased came to Rs.1,80,000/-. Out of this income, 1/4th amount was deducted towards her personal expenses. The dependency of claimants, thus, came to Rs.1,35,000/- per annum (Rs.1,80,000 – 45,000). The deceased was 30 years of age at the time of accident/death and the multiplier of 17 was applied. Thus, the claimants were found entitled to compensation of Rs.22,95,000/- (1,35,000 x 17). In addition to it, Rs.25,000/- were awarded as funeral expenses, Rs.1,00,000/- for loss of estate, Rs.1,00,000/- for loss of expectation of life of deceased, Rs.1,00,000/- for loss of consortium and Rs.1,00,000/- for love and affection. Hence, the claimants (respondent Nos.1 to 6) were found entitled to a total compensation of Rs.27,20,000/-. Feeling dissatisfied with the impugned award, the Insurance Company-appellant has preferred the present appeal.

During the pendency of appeal, claimants-respondent Nos. 1 to 4 have filed Cross Objection No.No.233-CII of 2016 seeking enhancement of compensation awarded by the Tribunal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

The Insurance Company is not disputing the finding given by Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver, which resulted

into the death of Nasrin @ Nasri. The impugned award has been challenged on the ground that the deceased was travelling in a three-wheeler, which was being driven by her father-in-law and on the ground of grant of 50% future prospects. The second ground for challenging the impugned award is that the compensation under the conventional heads has been granted on the higher side.

The arguments raised by learned counsel for the appellant (insurance company) are accepted and the impugned award is liable to be modified in view of the judgment passed by Hon'ble the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) and Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.10,000/- per month
(ii)	40% of (i) above to be added as future prospects	10,000 + 4000 = Rs.14,000/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	14,000 – 3500 = Rs.10,500/-
(iv)	Compensation after multiplier of 17 is applied	Rs.10,500/- x 12 x 17 = Rs.21,42,000/-
(v)	Compensation under conventional head	Rs.70,000/-
(vi)	TOTAL COMPENSATION AWARDED	Rs.22,12,000/-

The total amount of compensation of **Rs.22,12,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The 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 the case of “Shri

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Nagar Mal and others vs. The Oriental Insurance Company Ltd. and

others, Civil Appeal No.448 of 2018 (arising out of SLP (C) No.26853 of 2016) decided on 19.01.2018.” Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent. Appeal filed by insurance company and cross-objection filed by claimants-respondent Nos.1 to 6 stand partly allowed/disposed of accordingly.

(RITU BAHRI)
JUDGE

09.05.2018
ajp

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