

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

FAO no.9485 of 2014(O&M)
Date of Decision:03.08.2018

The New India Assurance Co. Ltd.

.....Appellant

Vs.

Jai Bhagwan and others

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Lalit Garg, Advocate,
for the appellant.

None for respondents no.1 and 2.

Mr.Ramender Chauhan, Advocate,
for respondents no.3 to 7.

AMOL RATTAN SINGH, J. (Oral)

This appeal has been filed by the insurance company that had insured the vehicle that was involved in an accident on 16.01.2012, in which one Satyawar unfortunately lost his life, with respondents no.3 to 7 herein having filed a claim petition before the Motor Accident Claims Tribunal, Bhiwani, seeking compensation from respondents no.1 and 2, i.e. the driver and owner of the said vehicle bearing registration no.HR-21B-2789, as also from the present appellant, i.e. the insurance company which was to indemnify the owner in case of any such accident.

The learned Tribunal vide the impugned award dated 22.08.2014, awarded a total sum of Rs.14,21,000/- as compensation to the aforesaid claimants respondents alongwith 6% per annum interest upon the said amount, to be paid by the appellant and respondents no.1 and 2, jointly and severally (though of course the appellant alone would eventually be liable to pay the compensation, thereby indemnifying the owner of the

vehicle).

The break-up of the compensation awarded is given as follows taken *ad verbatim* from the impugned awarded:-

Sr. No.	Heads	Calculations
(i)	Total monthly income assessed is	Rs.6000 per month
(ii)	50% of (I) above to be added as future prospects	Rs.6000+3000= Rs.9000 per month
(iii)	1/4 of (ii) deducted as personal expenses of the deceased =	Rs.2250/-. The amount remains Rs.9000-2250=Rs.6750 per month.
(iv)	The assessment of per annum comes to	Rs.6750X12 = Rs.81,000/ per annum.
(v)	Compensation after applying multiplier of 16 comes to	Rs.81,000X16 = Rs.12,96,000/-
(vi)	Loss of consortium to the petitioner no.1.	Rs.1,00,000/-
(vii)	Funeral and transportation charges etc.	Rs.25,000/-
	Total	Rs.14,21,000/-

Learned counsel appearing for the appellant submits that, firstly, the income of the deceased Satyawan, who was 35 years of age, has been erroneously assessed by the tribunal to be Rs.6,000/- per month, even after it had held that infact no evidence was led with regard to any specific income (the contention of the claimants being that he was earning Rs.12,000/- per month).

He further submits that as per the notification of the Haryana Government fixing the minimum wages of an unskilled labourer as applicable on the date of accident, the income should have been assessed at Rs.4,847/- and not Rs.6,000/- per month and further, the amount awarded towards loss of future prospects of income has also been erroneously taken to be 50% of the income of the deceased, whereas as per the judgment of the Supreme Court in “**National Insurance Co. Ltd. vs. Pranay Sethi and others**” 2017 (4) RCR (Civil) 1009, for a person who is 35 years of age, the

loss of future prospects of income is to be taken to be 40% of the actual income of the deceased on the date of the accident.

Yet further, he submits that as per the ratio of the aforesaid judgment, loss of consortium is to be restricted to Rs.40,000/- with another Rs.15,000/- to be awarded by way of loss of estate, and another Rs.15,000/- towards funeral expenses of the deceased.

Learned counsel for the respondents/claimants on the other hand submits that claimants having adduced oral evidence to the effect that the deceased was also an agriculturist, Rs.6000/- is not excessive income assessed by the Tribunal, even though the notification of the Haryana Government as aforesaid is not denied.

Having considered the aforesaid arguments, as regards the contention on the assessment of the income, I agree with learned counsel for the appellant, to the extent that Rs.6,000/- may be slightly more than what could have been assessed as the income of the deceased in the absence of any documentary evidence supporting the fact that he was also an agriculturist; and consequently, with the minimum wages being Rs.4,847/- per month, in my opinion Rs.5,000/- as the monthly income of the deceased would be appropriate to be assessed.

40% of Rs.5,000/- being Rs.2,000/-, that is to be added to the said income of the deceased by way of loss of future prospects of income, which comes to Rs.7,000/-, from which 1/4th is to be deducted towards the personal expenses of the deceased had he remained alive. The loss of dependency to the five claimants, i.e. the widow, three children and mother of the deceased, thereby come to be Rs.5,250/- per month, or Rs.63,000/- annually.

Learned counsel for the parties are *ad idem* that the multiplier of 16 applied by the learned Tribunal is appropriate in terms of the ratio of the judgment in “**Sarla Verma and others vs. Delhi Transport Corporation and another**”, 2009(3) RCR (Civil) 77 (SC), and consequently, the total compensation under the head of loss of income to the respondents/claimants would be $(5250 \times 12 \times 16) = \text{Rs.}10,08,000/-$, as against Rs.12,96,000/-, awarded by the Tribunal.

To the aforesaid amount Rs.40,000/- is to be added by way of loss of consortium to respondent no.3, Rs.15,000/- by way of loss of estate to all the claimants and further a sum of Rs.15,000/- is to be awarded to the widow of the deceased (respondent no.3) towards funeral expenses of the deceased.

Consequently, the total compensation to be paid to respondents no.3 to 7 is Rs.10,78,000/-, alongwith interest at the rate of 6% per annum thereupon, running from the date of institution of the claim petition, i.e. 27.02.2012, till the realization of the aforesaid amount.

The appeal is allowed, accordingly.

(AMOL RATTAN SINGH)
JUDGE

August 03 2018.

dharamvir

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO