

**XOBJC No.205-CII of 2016 in/and
FAO No.8201 of 2015 (O&M)**

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

**XOBJC No.205-CII of 2016 in/and
FAO No.8201 of 2015 (O&M)
Date of Decision: 28.05.2018**

Smt.Babli Devi and others

.....Appellants

Vs.

Kuldeep Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.K.S.Dhanora, Advocate, for the appellants.

Ms.Madhu Sharma, Advocate, for
the cross-objector/respondent-Insurance Company.

RITU BAHRI, J. (ORAL)

CM No.25850-CII of 2015

For the reasons mentioned in the application, delay of 8 days in re-filing the appeal is condoned.

Application stands disposed of.

CM No.25851-CII of 2015

For the reasons mentioned in the application, delay of 144 days in filing the appeal is condoned.

Application stands disposed of.

Main Case

Present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against award dated 13.01.2015, passed by the learned Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal') vide which compensation to the tune of Rs.6,37,000/- was awarded to the

claimants on account of death of Hardesh in a motor vehicular accident.

The respondent/Insurance Company has filed the cross-objection on the short ground that the claim petition was filed under IIInd Schedule of Section 163-A of the Motor Vehicles Act as the compensation has been awarded under the conventional heads is on the higher side.

FACTS NOT IN DISPUTE

On 10.03.2014 Hardesh since deceased was coming from village Padla to the side of his village Bhanpura, while travelling as pillion rider on the motorcycle bearing registration No.HR-08L-1745. Respondent No.1 was driving the motorcycle on normal speed on his due left hand side of the road observing with all traffic rules. At about 7:00 PM, they reached near the turn of village Chouth on Padla Kaithal road in the meanwhile a running stray bull came in front of the motorcycle and Kuldeep Singh applied brakes of the motorcycle just to save from the bull. But he lost his control on the motorcycle and the motorcycle struck with the bull. As a result of which, Hardesh fell on the metalled portion of the road and received multiple, serious and grievous injuries. Kuldeep Singh fell on the kacha portion of the road and received minor injuries . After the accident injures Hardesh was taken to Civil Hospital, Kaithal but due to the serious condition, he was referred to PGI, Chandigarh, where he succumbed to his injuries. The death of Hardesh took place, when he was travelling on ill-fated motorcycle and this accident occurred out of the use of the motorcycle. The local Police of the Police Station, Sadar Kaithal, Distt. Kaithal registered a DDR No.15 dated 13.03.2014.

COMPENSATION ASSESSED BY MACT

The Tribunal held that the deceased was 33 years old at the time of his death. The factum of accident had been proved and the offending vehicle was insured with respondent No.3-Insurance Company. The compensation has been assessed as under:

Sr.No.	Heads of compensation	Amount
1	Income as casual labourer	Rs.3200/- X 12= Rs.38400/- per annum.
2.	Deduction 1/3th	Rs.38400/- --- Rs.12800/-= Rs.25,600/-
3.	Total loss of dependency after applying multiplier	25600/- X16 = Rs.4,09,600/-
4.	Loss of consortium	Rs.1,00,000/-
5.	Loss of love and affection Rs.50,000 X2	Rs.1,00,000/-
6.	Funeral expenses	Rs.25,000/-
7.	Medical expenses on treatment	Rs.2342/-
	Total	Rs.6,36,942/- rounded off Rs.6,37,000/-

Learned counsel for the claimant-appellant 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 passed in SLP (Civil) No.25590 of 2014.** 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.

From the above facts, it is made clear that there was no other vehicle involved in the accident as it took place on account of a stray bull who had come in a running condition in front of the motorcycle of the

deceased and in order to save him, he lost his control and received multiple injuries. The Co-ordinate Bench of this Court in the case of **Harmesh Kumar @ Ramesh Kumar Versus Inderjit Singh and others 2014(3) RCR (Civil) 408** has held that when an accident took place when a stray cattle crossed the road and claim petition under 166 of Motor Vehicles Act had been dismissed by the Tribunal. While the first appeal, the Award of the Tribunal was set aside and the matter was remanded back to the Tribunal for fresh consideration and directions were issued for passing an appropriate order on merits on the issue regarding apportionment of negligence between the drivers of both the vehicles as there was a duty cast on the Tribunal to elicit the truth and provide for compensation wherever death or injury results by the use of a motor vehicle. It was further observed that a driver or passenger could not say that an animal was negligent for it is illogical and does not come within the realm of logical reasoning. The reasoning is that any person that drives must factor his own driving skills and not look for excuses of how another agency that is not human has created a situation that had diminished his own driving skills. However, the driver at best stated that they were tactful to avoid hitting a cattle and still save themselves from the situation of collusion. Negligence cannot be attributed to any person other than a human agency. The claim petition under 166 of the Motor Vehicles Act was held to be maintainable. In the present case claim petition has been entertained under 163 of the Motor Vehicles Act as accident took place on account of a stray bull who had come in a running condition in front of the motorcycle of the deceased and in order to save him, he lost his control and received multiple injuries. The accident has taken place on

account of rash and negligent driving of respondent No.1 i.e. Kuldeep Singh as the vehicle out of his control on account of sudden coming of stray bull in front of his motorcycle. Hence, claim petition under 166 of the Motor vehicle Act in such situation would be maintainable keeping in view the judgment passed in **Harmesh Kumar's judgment (Supra)**.

In the present case even though the compensation awarded by the MACT is under 163A is on the higher side as under the conventional heads only Rs.9500/- could have been given to the claimants. Keeping in view the fact, the manner in which accident had taken place and claim petition under 166 is also maintainable. This Court is exercising its inherent revisional powers and converting this petition under section 166 of the Motor Vehicles Act. A reference at this stage can be made by a judgment passed in the case of **United India Insurance Company Limited Vs. Shila Datta and others 2012(1) RCR (Civil) 582**, the Hon'ble Supreme Court was considering the Section 170 of the Motor Vehicles Act by which the Tribunal during inquiry can suo moto issue notice to the insurer for the reasons to be recorded in writing directing the insurer to be made a party to the proceedings. A claim petition can be entertained even suo moto by Tribunal by treating report of the accident sent to it by the police. The suo moto power can be exercised if during inquiry the Tribunal finds and satisfies itself that there is any collusion between the claimant and the owner/driver or where the owner/driver has failed to contest the claim, a direction can be given to the insurer to take all the pleas under Section 149(2) of the Motor Vehicles Act or any other grounds that are available to the driver/owner.

A reference can be made in the case of **Sudesh Sharma and**

others Vs. Prahlad Kumar Garg and another passed in FAO No.2492 of 2002, wherein, it is held that a conversion of an application under Section 163-A to 166 cannot be resisted by an insurer on a plea that such a conversion would result in undertaking a larger slice of liability if the negligence is established. In this case, this Court had allowed the application for conversion of a claim petition under Section 163 to 166 of the Motor Vehicles Act.

So, in view of the above and in the present case there was no other vehicle involved in the accident as it took place on account of a stray bull who had come in a running condition in front of the motorcycle of the deceased and in order to save him, he lost his control and received multiple injuries. This Court is of the opinion that where an accident is taken place and no other vehicle is involved, the claim petition under Section 166 of the MV Act is maintainable. A DDR was recorded with regard to accident had taken place as there was no need to get the FIR recorded as there was no negligence can be fixed on the part of anyone. The claim petition has been filed by widow, daughter and mother of the deceased, they were not aware the fact for claiming the compensation under Section 166 Motor Vehicles Act, therefore, this Court by exercising its suo moto revisional power the claim petition is converted from Section 163A to 166 of the Motor Vehicles Act for assessing the compensation.

It is not in dispute that the offending vehicle was fully insured with the Insurance company. In the present case, the date of accident is 10.03.2014, the income is to be taken as per minimum wages prevalent at the time of accident. 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.6,000/- per month
2.	Future prospect 40%	Rs.6,000/- + Rs.2400/-= Rs.8400/-
3.	Deduction 1/3th	Rs.8400/- --- Rs.2800/-= Rs.5600/-
4.	Total loss of dependency after applying multiplier	Rs.5600/- X16 X12= Rs.10,75,200/-
5.	Conventional heads	Rs.70,000/-
	Total	Rs.11,45,200/-
	Enhanced amount of compensation	Rs.11,45,200/- ---Rs.6,37,000/-= Rs.5,08,200/-

Resultantly, the enhanced amount of compensation of Rs.5,08,200/- 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 cross-objection is allowed and the appeal of the Insurance Company is dismissed.

(RITU BAHRI)
JUDGE

28.05.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No