

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

224

FAO-922-2016 (O&M)
Date of decision: 29.08.2018

Sunita and another

... Appellants

Versus

Rajbir and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ram Bilas Gupta, Advocate for the appellants.

None for respondent No.1.

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Ravi in a motor vehicular accident that took place on 23.10.2013.

The Tribunal has awarded compensation of Rs.7,64,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Multiplier	18
3. Deduction for personal expenses	1/4 th
4. Loss of dependency	Rs.7,29,000/-
5. Expenses on funeral	Rs.10,000/-
6. Loss of estate	Rs.5000/-
7. Loss of consortium	Rs.20,000/-

As per plea of the claimants, the deceased was earning Rs.7000/- per month as a labourer. The Tribunal has assessed his income at Rs.4500/- per month. Taking a clue from the minimum wage available at the relevant time, income of the deceased is assessed at Rs.5400/- per month. The claimants shall be entitled to addition in income for future prospects @40%. The application for compensation was filed by the widow and minor child of the deceased whereas parents of the deceased have been arrayed as proforma respondents No.4 and 5 before the Tribunal. The mother of the deceased shall be entitled to compensation, therefore, admissible

deduction for personal expenses would be $\frac{1}{3}^{\text{rd}}$. Multiplier adopted by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.10,88,640/- [(Rs.5400 x 12 x 18) + (40% future prospects) – ($\frac{1}{3}^{\text{rd}}$ deduction for personal expenses)].

Under conventional heads, claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.11,58,640/- and the additional amount is Rs.3,94,640/- (11,58,640 - 7,64,000), payable with interest @ 7.5% per annum from the date of petition till realization, to minor child of the deceased, to be invested in fixed deposit payable on his attaining the age of majority or for a period of three years, whichever is later.

The Tribunal, in view of its findings recorded in para 19 of the award that driver of JCB machine was not possessing a valid licence, exonerated the insurance company to pay compensation. The insurance company cannot escape its liability to pay compensation to the claimants even if the insured is guilty of violating the terms and conditions of the insurance policy. In this context, reference can be made to judgments of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Swaran Singh and others, 2004(3) SCC 297** and **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425**. The insurance company shall be liable to pay compensation to the claimants but would have right of recovery against the insured after satisfying the award passed by the Tribunal and additional sum allowed in appeal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

29.08.2018

ashok

Whether speaking/reasoned:
Whether reportable:

(REKHA MITTAL)
JUDGE

Yes / No
Yes / No