

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 276 of 2017(O&M)

Date of Decision:27.3.2018

The Oriental Insurance Company Limited

---Appellant

vs.

Smt. Sunita and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.C.Gupta, Advocate
for the appellant
Mr. Sagar Aggarwal, Advocate
for the claimants-respondents No. 1 to 3

Rekha Mittal, J.

The present appeal directs challenge against award dated 18.10.2016 passed by the Motor Accidents Claims Tribunal, Sonipat (in short “the Tribunal”) whereby compensation has been awarded on account of death of Anand Kumar in a motor vehicular accident that took place on 13.2.2016.

Counsel for the appellant-insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on issue No. 1 as well as quantum of compensation assessed by the Tribunal.

With regard to issue No. 1, it is argued that FIR pertaining to the occurrence was lodged by alleged pillion rider of motor cycle bearing No. HR-10T-6440 driven by deceased Anand Kumar after delay of one day, therefore, testimony of Jagmender is not sufficient to prove involvement of bus bearing No. HR-69A-9361 in the occurrence.

To challenge quantum of compensation assessed by the Tribunal, it is argued that the Tribunal has allowed benefit of increase in income for future

prospects @ 50% but the same should be 40% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**. Compensation awarded under conventional heads needs to be restricted to Rs. 70,000/- in the light of aforesaid judgment. He has further submitted that the Tribunal has assessed income of the deceased at Rs. 10,000/- per month despite noticing that daily wage of skilled labour at the relevant time was Rs. 9233/- per month.

Counsel for the claimants has supported the award.

Jagmender PW4, an eye witness to the occurrence and author of the FIR (Ex. P17) appeared in the witness box to establish plea of the claimants that accident took place due to rash and negligent driving of aforesaid bus driven by Narender @ Niranjan at the time, unfortunate occurrence took place. Counsel for the appellant has failed to point out any facts elicited in cross examination of Jagmender to discard and disbelieve his testimony or to prove that he was not available at the spot to establish plea of the claimants that accident took place due to rash and negligent driving of offending bus by its driver. Counsel would fairly inform that driver of the offending bus did not appear in the witness box to counter testimony of Jagmender or establish plea of the respondents-claimants that accident did not take place in the manner brought forth by the claimants and deposed by Jagmender. It has also been admitted that driver of the offending bus was put to trial after due investigation of FIR (Ex. P-17) on the basis whereof report under Section 173 of the Code of Criminal Procedure (Ex. P-15) was submitted before the Magistrate concerned. The Tribunal, on a detailed consideration of the materials on record and by relying upon judgments of this Court **Harjit Singh and another vs. Suresh Kumar and others, FAO No. 1464 of 2006 decided on 18.12.2008** and **Girdhari Lal vs. Radhey Shyam and others 1993(2) PLR 109** has rightly arrived at a conclusion that the claimants have successfully discharged onus of issue No. 1 to prove that accident took place due

to rash and negligent driving of bus No. HR-69A-9361 by its driver. In this view of the matter, findings recorded by the Tribunal on issue No. 1 are liable to be affirmed and ordered accordingly.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has awarded an amount of Rs.21,65,300/-, detailed hereunder:-

Monthly income of the deceased	Rs. 10,000/-
Increase in income for future prospects	50%
Deduction for personal expenses	1/3 rd
Multiplier	16
Loss of dependency	Rs. 19,20,000/-
Loss of consortium	Rs. 1,00,000/-
Loss of love and affection	Rs. 1,00,000/-
Funeral expenses	Rs. 25,000/-
Medical expenses	Rs. 20,300/-

The Tribunal in para 35 of the award has taken note of notification dated 5.4.2016 issued by the Labour Commissioner whereby minimum wage of skilled labour has been fixed at Rs. 9233/- per month with effect from 1.1.2016. As a matter of fact, the minimum wage of skilled labour fixed by the State of Haryana with effect from 1.1.2016 is at the rate of Rs. 9263.71/-. In the given scenario, there is no justification for assessing income of the deceased at Rs. 10,000/- as against minimum wage. However, claimants failed to adduce clear evidence with regard to income of the deceased. In the circumstances, income of the deceased is assessed at Rs. 9300/- per month. Claimants shall be entitled to increase in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are affirmed. As such, loss of dependency comes to Rs. 9300 x 12 x 16=17,85,600 +7,14,240(40%) =24,99,840 - 8,33,280(1/3rd) = Rs. 16,66,560/-.

Under conventional heads, claimants shall be entitled to

compensation in the light of **Pranay Sethi and others' case (supra)**, detailed hereunder:-

Loss of consortium to widow	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

The Tribunal has awarded an amount of Rs. 20,300/- for medical expenses and the same is affirmed. The total compensation is Rs.17,56,860/-. Compensation awarded by the Tribunal is reduced to the extent of Rs. 4,08,440/- (21,65,300-17,56,860).

Counsel for the appellant has also raised a submission that the Tribunal has allowed interest at a higher rate i.e. 9% per annum. I do not find any reason to interfere in the rate of interest allowed by the Tribunal in the light of judgment of Hon'ble the Supreme Court **Sandhya Rani Debbarma and others vs. National Insurance Co. Ltd. and another, 2016 (4) RCR (Civil) 465.**

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. No order as to costs.

(Rekha Mittal)
Judge

27.3.2018

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Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No