

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

FAO No.3226 of 2017 (O&M) and
Cross-Objections No.16-CII-2018 (O&M)
Decided on:-March 26, 2018.

Bajaj Allianz General Insurance Company Limited.

.....Appellant.

Versus

Mukhtiar Singh and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Punit Jain, Advocate
for the appellant.

Mr. Anil Kumar Sephia, Advocate
for respondents No.1 and 2.

Mr. Tarun Singla, Advocate
for respondents No.3 and 4.

HARI PAL VERMA, J. (Oral)

This order shall dispose of the appeal filed by the appellant-insurance company against the award dated 30.01.2017 passed by learned Motor Accidents Claims Tribunal, Jalandhar (for short, the Tribunal) as well as the cross-objections filed on behalf of the respondent-claimants.

CM-1082-CII-2018 in
Cross-Objections No.16-CII-2018

Prayer in this application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 27 days in filing the cross-objections.

For the reasons stated in the application, the same is allowed and the delay of 27 days in filing the cross-objections is condoned.

FAO No.3226 of 2017

The appellant-insurance company has filed the present appeal impugning the award dated 30.01.2017 passed by the Tribunal, whereby on a claim petition filed by the respondents No.1 and 2-claimants under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), the Tribunal had awarded total compensation of Rs.2,85,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization of the amount, on account of the death of Tarsem Kaur, who died in a motor vehicular accident which took place on 03.12.2015.

As per the claim petition, on 03.12.2015, Mohinder Singh along with his wife Tarsem Kaur was going to his house on Activa scooter bearing registration No.PB-08-BQ-8763. At about 01.30 p.m., when they reached in the area of Police Station Mehtiana, a vehicle bearing registration No.PB-08-CP-2003 driven by its driver in a rash and negligent manner struck against the Activa scooter. Because of this impact, Mohinder Singh and his wife Tarsem Kaur fell down on the metalled road and suffered serious injuries and both of them died on the spot.

As per the version of claimants, deceased Tarsem Kaur was about 67 years of age. She was a household lady and was rendering valuable service to the family worth Rs.4,000/- per month.

The Tribunal assessed the contribution of the deceased towards her family as Rs.4,000/- per month and Rs.48,000/- per annum. By deducting 1/3rd income as own expenses of the deceased, the Tribunal assessed the dependency of claimants as Rs.32,000/- annum. Since the deceased was about 67 years of age at the time of his accidental death, a multiplier of '5' was

applied by the Tribunal and the total dependency of the claimants was assessed as Rs.1,60,000/- (32000 x 5).

Apart from the above compensation, the Tribunal has also awarded Rs.1,25,000/- under the conventional heads i.e. Rs.1,00,000/- for loss of love and affection and Rs.25,000/- towards funeral expenses. Thus, a total compensation of Rs.2,85,000/- was awarded by the Tribunal.

Aggrieved against the impugned award dated 30.01.2017, the insurance company has filed the present appeal.

Learned counsel for the appellant-insurance company has argued that the award passed by the Tribunal is contrary to law. In the present case, the claimants have failed to prove the crucial element of negligence, which is a determining factor so as to award compensation.

He has further argued that the Tribunal has also committed a legal error by awarding Rs.1,25,000/- under the conventional heads i.e. for loss of love and affection and towards funeral expenses. In view of the law laid down by Hon'ble Supreme Court in *National Insurance Company Limited Versus Pranay Sethi and others 2017(4) RCR (Civil) 1009*, the claimants are entitled for an amount of Rs.30,000/- only under the conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- for funeral expenses.

On the other hand, learned counsel for the respondent-claimants/cross-objectors has argued that the Tribunal has assessed rather less contribution of the deceased towards her family. The role of a mother or a household lady in the family is altogether different, which cannot be

computed in terms of money. The Tribunal has wrongly applied 1/3rd deduction towards the personal expenses of the deceased.

I have heard learned counsel for the parties.

Record reveals that regarding the aforesaid accident, a DDR was also recorded by the police. Further, the driver of offending vehicle i.e. Pavitar Singh (respondent No.3 herein) while appearing in the witness box as RW1 has admitted the factum of accident. Though he has deposed that the accident was caused due to the negligence of Mohinder Singh, but interestingly, he has not lodged any report to the police to the effect that the negligence was on the part of Mohinder Singh. Accordingly, the Tribunal has rightly recorded a finding of fact that the accident was caused due to rash and negligent driving of the offending vehicle by its driver/respondent Pavitar Singh. Therefore, the plea of learned counsel for the appellant-insurance company that the claimants have failed to prove the element of negligence on the part of respondent Pavitar Singh, cannot be accepted.

In order to award just and reasonable compensation, the Tribunal has already assessed contribution of the deceased as Rs.4,000/- per month though she was 67 years of age. The claimants are two major sons of the deceased, who are 47 and 42 years of age respectively. Therefore, in true sense, they were not dependents upon the deceased and it was only on account of contribution rendered by the deceased towards her family, the Tribunal has awarded the compensation.

Considering the age of deceased Tarsem Kaur as 67 years, the Tribunal has rightly applied the multiplier of '5' and the dependency of the claimants was rightly assessed as Rs.1,60,000/- (32000 x 5). So far as 1/3rd

deduction made by the Tribunal towards the personal expenses of deceased is concerned, the same is justified for the reason that the deceased was about 67 years of age and at that age, certain unavoidable expenses have to be made which include medicines and other old age related helps.

Therefore, this Court finds that no interference is warranted in the case except as regards the compensation awarded by the Tribunal under the conventional heads. In view of the law laid down in *Pranay Sethi's case (supra)*, the claimants are entitled to Rs.30,000/- only under the conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- for funeral expenses. The claimants are not entitled to the compensation of Rs.1,00,000/- as awarded by the Tribunal for loss of love and affection.

Accordingly, the present appeal is disposed of, and the impugned award dated 30.01.2017 passed by the Tribunal is modified to the aforesaid extent. Consequently, the respondent-claimants are awarded total amount of compensation of Rs.1,90,000/- (Rupees one lakh and ninety thousand) along with interest @ 7.5% from the date of filing of the claim petition till its realization.

In view of the above, the cross-objections filed by the respondent-claimants stand dismissed.

Since the main appeal has been disposed of, pending civil miscellaneous application, if any, also stands disposed of.

March 26, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No