

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

FAO No.2117 of 2018 (O&M)

Date of Decision: April 27, 2018

National Insurance Company
Versus

...Appellant

Prito and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.S.S.Sidhu, Advocate for the appellant - Insurer.

HARINDER SINGH SIDHU, J.

The Insurer has filed the present appeal challenging the Award dated 24.01.2018 passed by the Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 10.09.2016 in the area of Nilokheri overbridge, village Nilokheri, District Karnal, a vehicular accident took place involving Canter No.HR64-8018 (herein for short 'the offending vehicle'), wherein, Som Nath lost his life. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

On a claim petition having been filed by the legal representatives of the deceased, the Tribunal assessed the income of the deceased at Rs.10,520/- per month, awarded addition of 10% towards future prospects, deducted 1/3rd towards his personal expenses, applied the multiplier of 11 (deceased aged 53 years). The loss of dependency was assessed at Rs.10,18,336/-. Besides, Rs.40,000/- towards 'loss of consortium', Rs.15,000/- as 'funeral expenses' and Rs.15,000/- towards 'loss of love and

affection' were awarded. The Tribunal also awarded medical expenses of Rs.58,209/-. In all, compensation of Rs.11,47,000/- (rounding off) along with interest was awarded.

The sole argument of Ld. Counsel for the appellant-Insurance Company is that the Tribunal has assessed the income of the deceased as per the D.C.rates @ Rs.10,520/- per month. He argued that the D.C.rates are applicable to contingent paid staff of Government Departments. He contended that as held by the Hon'ble Supreme Court in various cases including Govind Yadav vs. The New India Insurance Company Limited, 2011(10) SCC 683, in the absence of proof of income, the income ought to be assessed as per the minimum wages, prevalent on the date of accident. He submits that the accident occurred on 10.9.2016, and according to Communication No.IR-2/2016/40727-883 dated 21.10.2016, sent by the Labour Commissioner, Haryana to different Departments of the State, the minimum wages for unskilled labour w.e.f. 1.7.2016 were fixed at Rs.8070.44 per month.

In view of the above and the decision of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 AIR(SC) 5157 the compensation is re-assessed as under:-

Sr.No.	Heads	Calculation (In Rs.)
(i)	Monthly Income	8070.44
(ii)	10% of above (i) to be added as future prospects (deceased aged 53 yrs.)	8070.44+(8070.44x10/100) = 8,877.48 (rounded off at Rs.8878/-)
(iii)	Dependency (1/3 rd of (ii) deducted as personal expenses of the deceased - two dependants)	8878-(8878x1/3)= 5,919/- per month (rounded off)

(iv)	Loss of dependency after multiplier of 11 is applied	5919x12x11=7,81,308/-
(v)	Loss of Consortium (Exclusively payable to the widow of deceased)	40,000/-
(vi)	Loss of Estate	15,000/-
(vii)	Funeral Expenses	15,000/-
(viii)	Medical Expenses	58,209/-
	Total	9,09,517/- (rounded off at 910000)

Hence, the appeal is allowed. The Award of the Tribunal is modified to the extent that the claimants – respondents No.1 and 4 (widow and mother of the deceased) are held entitled to total compensation of Rs.9,10,000 /-, that is, Rs.2,37,000/- (1147000-910000) less than the amount awarded by the Tribunal.

The appeal has been disposed of without notice to the respondents – claimants to avoid unnecessary delay and expense. A copy of this order be conveyed to the claimants-respondents No.1 and 4. In the event of the said respondents having any objection, they may file application to that effect. On receipt of any such application, the same be listed for hearing.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any ground that may be available to them.

April 27, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No

