

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) FAO No.2386 of 2018 (O&M)

Date of Order: 14.08.2018

National Insurance Company Ltd.

..Petitioner

Versus

Kirna Kumari and others

..Respondents

(2) FAO No.4715 of 2018 (O&M)

Kirna Kumar and others

...Petitioners

Versus

Birinder Singh @ Varinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Gupta, Advocate,
for the appellant (in FAO No.2386 of 2018)

Mr. Munish Gupta, Advocate,
for the appellants (in FAO No.4715 of 2018)
for the respondents (in FAO No.2386 of 2018)

ANIL KSHETARPAL, J(Oral)

C.M.No.8767-CII of 2018 in FAO No.2386 of 2018)

C.M.No.15755-CII-2018 in FAO No.4715 of 2018

Prayer in these applications is for condonation of delay of 14
and 69 days in filing the appeals.

For reasons mentioned in these applications, which is supported
by an affidavit, the delay of 14 and 69 days in filing the appeals is
condoned.

Applications are allowed.

MAIN

By this judgment, FAO No.2386 and 4715 of 2018 shall stand disposed of as both are arising out from the same award passed by the Learned Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as 'the Tribunal'). In fact, these appeals are cross appeals, one filed by the Insurance Company and the second filed by the claimants.

Learned counsel for the Insurance Company has forcefully submitted that the deceased was coming from the link road and entering into the main road, therefore, it was his duty to enter the main road carefully. Hence, he submitted that the findings of negligence of the driver of the offending vehicle are erroneous.

On the other hand, learned counsel for the claimants has submitted that Sunil Kumar, father of the deceased who was following his son has specifically stated that his son was waiting to enter the main road when the offending vehicle i.e. the truck came and hit the deceased. He further pointed out that the driver of the offending vehicle, namely, Birinder Singh has not been examined.

Learned counsel for the Insurance Company relied upon a lay out plan prepared by the police to point out that the accident took place towards left hand portion of the main road. It is admitted position to prove that lay out plan, no evidence has been lead. The person who prepared the lay out plan has not been examined.

In absence of any evidence on behalf of the respondents, the court is left with no choice but to rely upon the evidence lead by the claimants i.e. statement of Sunil Kumar who has specifically stated that his son was waiting to enter the main road when offending vehicle i.e. truck hit

him.

Next argument of Learned counsel for Insurance Company is that there are only three dependents, namely, widow, minor daughter who was one month old at the time of filing of the petition and mother. He further submitted that father cannot be dependent as he was 50 years old, hail and hearty. Hence, he submitted that the deduction for self expenses should be 1/3rd of the income. Learned counsel further submitted that the multiplier applied should be 17 as the age of the deceased was 30. He submitted that with respect to age of the deceased between from 30 to 35, the multiplier to be applied should be 17.

On the other hand, learned counsel for the claimants, submitted that first of all income assessed is on the lower side as it is proved on the file that the deceased was working as a mason, which is a skilled worker. He submitted that statement of the Sarpanch has been recorded apart from statement of the father of the deceased. Hence, he submitted that as per minimum wages notified by the Punjab Government, a semi skilled worker would be earning minimum Rs.7990/-, therefore, the income assessed is on the lower side. He further pointed out that the learned Tribunal has concluded that multiplier of 18 has to be applied, whereas in fact multiplier of 17 has been applied. Learned counsel has further submitted that on account of loss of estate, no amount has been awarded which according to the judgment passed by a Constitution Bench of the Hon'ble Supreme Court in *National Insurance Compnay Limited v. Pranay Sethi and others*, is Rs.15,000/-

Keeping in view the evidence available on record, the income assessed is found to be insufficient. The minimum wages of a semi skilled

worker is Rs.7990/-, so let's round this figure and make it Rs.8000/-. No doubt, the notification is dated 01.03.2017, however, claimants were residents of village in District Hoshiarpur, where work in abundance is available. A trained mason is not available for less than Rs.500/- per day.

Keeping in view the aforesaid fact, the income is assessed at Rs.8000/-, deduction would be 1/3rd and multiplier would be 17 and Rs.15,000/- would be added as loss of estate. The amount is re-worked as under:-

<i>Heads</i>	<i>Compensation awarded by MACT</i>	<i>Compensation awarded by High Court</i>
Monthly Income assessed	Rs.7000/- per month	Rs.8000/- per month
Add Future Prospects	Rs.2800/-	Rs.3200/-
Total Income per month	Rs.9800/-	Rs.11200/-
Deduction (1/4 th)	Rs.9800-2450=7350/-	Rs.11200-3733(1/3 rd)=7467/-
Multiplier =15	Rs.7350x12x17=14,99,400/-	Rs.7467x12x17=15,23,268/-
Conventional Heads		
-Loss of estate	NIL	Rs.15000/-
-Funeral Expenses	Rs.15,000/-	Rs.15000/-
-Consortium	Rs.40,000/-	Rs.40000/- Total=70,000/-
Total Compensation	1499400+55000=15,54,400/-	1523268+70000=15,93,268/-
Already awarded by Motor Accident Claims Tribunal	Rs.15,54,400/-	Rs.15,93,268/--
Compensation Awarded by the High Court : Rs.15,93,268-00-		
(-)Compensation Awarded by the MACT : Rs.15,54,400-00		
Enhanced Compensation : Rs. 38,868-00		

In view thereof, both the appeals are disposed of accordingly.

The enhanced amount i.e. Rs.38,868/- shall carry interest @ 7.5% from the date of filing of the claim petition till its realization.

August 14, 2018

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No