

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2791-2018 (O&M)

Date of decision: 21.05.2018

The Oriental Insurance Company Ltd.

...Appellant

V/s.

Smt. Kiran Devi and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

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

RITU BAHRI, J. (Oral).

CM-10479-CII-2018

For the reasons mentioned in the application, delay of 52 days in filing the appeal is condoned.

Application is allowed.

FAO-2791-2018

The insurance company has come up in appeal against the award dated 08.12.2017 passed by the Motor Accident Claims Tribunal, Bhiwani (for short, the Tribunal) whereby compensation of Rs.17,82,800/- has been awarded to the six claimants on account of the death of Rajesh, who was 40 years of age, died in a road accident which took place on 31.10.2016.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 31.10.2016, Rajesh and his friend Pradeep were going to Charkhi Dadri from their native village Misri on scooter bearing registration No. HR-16-R-5456. Rajesh was driving the aforesaid scooter. At about 7:30/8:00 AM, they reached at Jaishree T-point Misri, a bus bearing registration No. HR-61-A-5456 came from back side, being driven by respondent No. 1 at a very high speed, rashly and

negligently and directly hit the scooter. Due to this heavy impact, Rajesh and Pradeep fell down on the road. Rajesh received multiple and grievous injuries and succumbed to the injuries later on.

With regard to the alleged accident, Pradeep, who was an eye witness filed an FIR No. 243 dated 31.10.2016 (Ex.P1) under Sections 279, 337 and 304-A IPC at Police Station Bond Kalan against respondent No. 1- Jagbir Singh. Consequently, the claimant-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

The insurance company is not challenging the finding on issue No. 1 as the accident took place on account of rash and negligent driving of respondent No. 1 as this finding has been rightly given keeping in view FIR (Ex.P1) was registered against the driver and he was charge-sheeted (Ex.P2), challaned (Ex.P3) and he is facing criminal trial. The Tribunal has assessed the compensation as under:-

HEADS	CALCULATIONS
Age of the deceased	40 years
Number of dependents and his relationship	Widow, daughter, son daughter, mother and father
Occupation and income	8,000/- PM
Prospects of increase of income, if any and % of increase (30%, 50% or 100%)	40.00%
Proportion for deduction for personal expenses (1/3, 1/4, 1/5, ½ etc.)	1/5
Multiplier	15
Loss of dependency	16,12,800/-
Loss of consortium to spouse	40,000/-
Loss of love and affection to minor children	1,00,000/-
Funeral expenses	15,000/-
Loss of estate	15,000/-
Total	17,82,800/-

The insurance company is challenging the award on the ground that the income of the deceased was taken as Rs.8,000 per month which is on the higher side keeping in view the minimum wages applicable that time was Rs.6,000/-. This ground is rejected as the minimum wages are not to be applied very strictly. The deceased was 40 years of age and he was a mason by profession and hence Rs.8,000/- per month income is rightly taken.

The second ground to challenge is that there is 1/5th cut whereas it should have been 1/4th even this argument is liable to be rejected as the claimant No. 6 was dependent upon him as he was 62 years of age hence deduction of 1/5th has been rightly done.

REASSESSED COMPENSATION

The fact of accident is admitted and proved. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account.

A perusal of the calculation shows that Rs. 1 lac is awarded extra which is against the judgment of ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017), and award was passed in the year 2017. Hence, Rs. 1 lac is deleted from the compensation and hereby reassessed in view of the judgments passed by Hon'ble the Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77, ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

HEADS	CALCULATIONS
Age of the deceased	40 years
Number of dependents and his relationship	Widow, daughter, son daughter, mother and father
Occupation and income	8,000/- PM
Prospects of increase of income, if any and % of increase (30%, 50% or 100%)	40.00%
Proportion for deduction for personal expenses (1/3, 1/4, 1/5, ½ etc.)	1/5
Multiplier	15
Loss of dependency	16,12,800/-
Loss of consortium to spouse	40,000/-
Funeral expenses	15,000/-
Loss of estate	15,000/-
Total	16,82,800/-

Keeping in view this fact, at this stage, on the asking of the Court, Mr. Aman Sharma, Legal Aid counsel, Enrollment No. P/1174/2011, accepts notice on behalf of the claimants.

It has been informed that nothing has been paid to the claimants till date. Hence, a direction is given to the insurance company to pay the modified amount of compensation of Rs.16,82,800/- within a period of one month from the date of receipt of certified copy of this order and a report of compliance will be sent here. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “*Shri Nagar Mal and others V/s. The Oriental Insurance Company Ltd. and others in Civil Appeal No. 448 of 2018.*” Remaining conditions of disbursal of amount shall remain unaltered.

Appeal is allowed.

(RITU BAHRI)
JUDGE

May 21, 2018

Divyanshi

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No