

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

FAO No.310 of 2018(O&M)

Date of decision: 11.7.2018

Greenwood Public Senior Secondary SchoolAppellant

VERSUS

Future Generali India Insurance Co. Ltd. and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh Lamba, Advocate for the appellant.

REKHA MITTAL, J.

CM No.1056-CII of 2018

Prayer in this application is for condoning delay of 2 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Kanta Chauhan, Principal of appellant- school, the application is allowed. Delay of 2 days in filing the appeal stands condoned.

Disposed of accordingly.

CM No.1057-CII of 2018

Prayer in this application is for condoning delay of 204 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Ms. Monisha Lamba, Advocate, the application is allowed. Delay of 204 days in re-filing the appeal stands condoned.

Disposed of accordingly.

FAO No.310 of 2018

The registered owner of offending vehicle bearing No.HR30-F/0209 is in appeal against the award dated 07.02.2017 passed by the Motor Accidents Claims Tribunal, Palwal (in short 'the Tribunal') whereby compensation has been awarded on account of death of Baisan wife of Sh. Devi Singh in a motor vehicular accident that took place on 09.10.2014.

Counsel for the appellant would argue that findings of the Tribunal that the insured is guilty of violating the terms and conditions of contract of insurance on the basis whereof the insurance company has been given right of recovery against the insured are erroneous and liable to be set aside. It is argued that even if there was no permit to ply the vehicle in question on the day of occurrence, the insurance company neither can escape liability to pay compensation to the claimants nor can press for right of recovery against the insured. In support of his contention, he has relied upon judgment of this Court **M/s Yadwindra Public School, S.A.S. Nagar, Mohali Vs. Seema and others, 2010(2) RCR (Civil) 50.**

To challenge the quantum of compensation assessed by the Tribunal, counsel has two-fold submissions to make. It has been argued that the Tribunal has applied multiplier of 11 by holding that the deceased was 50 years old at the time of occurrence. It is vehemently argued that as per facts recorded in ration card Ex.P4, Baisan is stated to be 31 years old at the time of preparation of ration card in the year 1986, therefore, she was 63/64 years old at the time of occurrence in the year 2014 and an

appropriate multiplier is required to be applied accordingly. Compensation allowed under conventional heads is liable to be restricted to Rs.55,000/- in the light of latest judgment of Hon'ble the Supreme Court

National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.

The plea of the appellant that the insurance company has wrongly been held entitled to right of recovery against the insured for want of permit on the day of occurrence is squarely covered against the appellant in the light of judgment of this Court **M.S. Middle High School and another Vs. Usha and others, FAO no.7555 of 2015 decided on 26.09.2017**, wherein this Court on a detailed consideration of various judgments on the issue including **M/s Yadwindra Public School S.A.S. Nagar Mohali's case** (supra) relied upon by counsel for the appellant has rejected plea of the insured that either the vehicle in question did not require any permit or the insured is not guilty of violating the terms and conditions of insurance constituting a defence under Section 149(2) of the Motor Vehicles Act, 1988.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has awarded compensation of Rs.9,27,000/- detailed hereunder:-

Monthly income of the deceased	Rs.6,000/-
Multiplier	11
Loss of dependency	Rs.7,92,000/-
Consortium to husband	Rs.10,000/-
Loss of love and affection to children	Rs.1,00,000/-

Funeral expenses

Rs.25,000/-

Perusal of the award makes it evident that there was a serious dispute between the parties with regard to age of the deceased. Devi Singh – husband of the deceased appeared in the witness box and claimed that deceased was 42 years old at the time of occurrence. However, he himself brought on record documents Ex.R1 to R4 in his cross examination. Exhibit R1 is the Aadhaar Card wherein year of birth of the deceased has been mentioned as 1963. Exhibit R2 is her election identity card wherein her age as on 01.01.1994 is recorded to be 31 years. Exhibit R3 is Voter Identity Card of Devi Singh – claimant wherein on 01.01.1994 his age has been mentioned as 27 years. In the Aadhaar card of Devi Singh Ex.R4 his year of birth has been mentioned as 1961. In the ration card brought on record by the claimant, the deceased is stated to be 31 years in the year 1986. Counsel for the appellant has sought to rely upon age of the deceased recorded in the ration card in preference to her year of birth recorded in the Aadhaar card Ex.R1 and her age mentioned in the election identity card Ex.R2. Since in Aadhaar card Ex.R1 and election identity card Ex.R2, year of birth of deceased comes to 1963, the Tribunal has rightly given primacy to Aadhaar Card and election identity card Ex.R1 and R2 vis-à-vis the ration card to record that the deceased was 50 years old on the date of accident. I would hasten to add that there is nothing on record suggestive of the fact that Aadhaar Card and election identity card were prepared subsequent to the occurrence in question. In this view of the matter, multiplier of 11 applied for computing loss of dependency cannot be faulted with.

So far as plea of the appellant with regard to compensation under conventional heads, the same is liable to be accepted in the light of judgment of Hon'ble the Supreme Court in **Pranay Sethi and others' case** (supra). Claimant shall be entitled to a sum of Rs.55,000/- under conventional heads detailed hereunder:-

Loss of consortium to the spouse	Rs.40,000/-
Expenses on funeral/last rites	Rs.15,000/-

In view of the above, compensation awarded by the Tribunal is reduced to the extent of Rs.80,000/-.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention here that amount of compensation assessed by the Tribunal has been reduced without notice to the claimants. They would be at liberty to file an appropriate application if they have any grievance to express. It is further clarified that in case the claimants file an appeal for enhancement, any observation made for disposing of the appeal filed by the owner would not cause prejudice to their rights.

JULY 11, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no