

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

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FAO-5763-2017 (O & M)
Date of Decision:10.08.2018

Oriental Insurance Company Limited

...Appellant

Versus

Rekha Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.N. Singal, Advocate
for the appellant.

Mr. Mrigank Sharma, Advocate
for respondents No.1 and 2.

Mr. Sukhdev Singh Gopera, Advocate
for respondents No.4 and 5.

ANIL KSHETARPAL, J.(Oral)

Insurance Company is in the appeal against the award passed by the learned Motor Accident Claims Tribunal awarding a sum of Rs.14,59,800/- on account of death of Krishan Kant aged about 45 years, who left behind three dependants widow, minor son and mother respectively.

Claimants claimed that deceased Krishan Kant was self employed working as tyre puncture worker for repairing the tyer on the road side of the Petrol Pump at Kalka.

Learned counsel for the appellant has raised three arguments:-

(i) When FIR was registered, vehicle number was not disclosed

and, therefore, no evidence has been led as to how Om Parkash, who was

walking along with Krishan Kant examined as PW-3 came to know about the vehicle number.

(ii) It has further been submitted that the income of the deceased has been assessed at Rs.8,500/- whereas minimum wages is Rs.5,812/-. He further submitted that on account of future prospects increase could only be to the extent of 25% whereas learned Motor Accident Claims Tribunal has added 30%.

(iii) he further submitted that under the conventional heads i.e. Funeral expenses, loss of consortium and loss of estate, maximum Rs.70,000/- could be awarded whereas the learned Motor Accident Claims Tribunal has awarded Rs.2,25,000/-.

On the other hand, learned counsel for the respondents-claimants while defending the judgement has submitted that during investigation, police had found out that vehicle being driven by respondent No.4 had caused the accident, which was owned by respondent No.5. He brought to the notice of the Court that challan has also been presented against respondent No.4. With regard to quantum of the income, learned counsel pointed out that when the claimant-Rekha Devi appeared in evidence, she specifically stated that her husband is working as Puncturewala on the highway along side the Petrol Pump. However, in the cross-examination this part of the statement was not challenged only suggestion given was that the earning as alleged in the affidavit is incorrect.

With regard to future prospects and conventional heads, counsel does not dispute the argument of learned counsel for the appellant.

In view of the judgment passed by the Constitution Bench of the Supreme

Court in the case of *“National Insurance Company Limited vs. Pranay Sethi and others” JT 2017 (10) SC 450.*

This Court has evaluated the evidence with the help of learned counsel as photocopy of the record has been produced. It is not in dispute that respondent No.4 was found to be driving the offending vehicle in the police investigation and challan has been presented.

Still further, Om Parkash, the eye witness, who was admittedly walking along with Krishan Kant has been examined. Keeping in view the aforesaid facts, this Court is not impressed with the argument that driver of the vehicle has not been properly identified.

With regard to quantum of income, it may be noticed that widow Rekha Devi has appeared in the evidence. She has stated that her husband was working as a self employed mechanic for affixing tyres, which are punctured on the highway. She has stated that her husband used to have his establishment along side the petrol pump situated at Kalka.

In these circumstances, the argument of learned counsel for the appellant that income of the deceased can only be taken as an unskilled worker is erroneous. Krishan Kant was a self employed person having technical knowledge. The Court has only assessed income at Rs.8,500/-, keeping in view that the accident took place on 08.06.2015.

In view thereof, this Court does not find any ground to interfere with the income assessed. However, on account of future prospects, claimants shall only be entitled to increase in income of 25% and on account of conventional heads, the claimant shall be in total entitled to Rs.70,000/-.

Heads	Compensation awarded by Hon'ble High Court	Compensation awarded by Motor Accident Claims Tribunal
Income assessed+future prospects	8500/-	8500/-
	(25%) 2125/-	(30%) 2550/-
	10,625/-	11,050/-
-1/3 rd deduction	-3541/-	3700
	7084/-	7350/-
Multiplier=14	7084 X 12 X 14 = 11,90,112/-	7350 X 12 X 14 =12,34,800/-
+funeral expenses	15000/-	25000/-
+loss of estate	15000/-	NIL
+consortium	40000/-	1,00,000/-
+Loss of love and affection	NIL	1,00,000/-
Compensation Awarded	12,60,112/-	14,59,800/-
-Compensation awarded by MACT	-14,59,800/-	
	1,99,688/-	

Keeping in view the aforesaid, the award passed by learned Motor Accident Claims Tribunal, is modified. Appeal filed by the Insurance Company is partly accepted.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

10.08.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No