

In the High Court of Punjab and Haryana at Chandigarh

FAO-5764 of 2018(O&M)
Date of Decision: 17.9.2018

National Insurance Company Limited

---Appellant

versus

Noor Hassan and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ram Avtar, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against award dated 3.5.2018 passed by the Motor Accidents Claims Tribunal, Karnal (in short “the Tribunal”) whereby compensation has been assessed on account of death of Mohd. Khalid son of Noor Hassan in a motor vehicular accident that took place on 1.6.2017.

The Tribunal has assessed compensation of Rs.18,44,400/-, detailed hereunder:-

Monthly income of the deceased	Rs. 12,000/-
Addition in income for future prospects	40%
Deduction for personal expenses	½
Multiplier	18
Loss of dependency	Rs. 18,14,400/-
Loss of estate	Rs. 15,000/-
Transportation and funeral expenses	Rs. 15,000/-

Counsel for the appellant would inform that the appeal has been

preferred to assail quantum of compensation assessed by the Tribunal. It is argued that the Tribunal has assessed income of the deceased at Rs. 12,000/- per month but the minimum wage at the relevant time was Rs. 8,280/- per month.

The Tribunal in para 19 of the award has noticed that plea of the claimants is that the deceased was working as conductor and earning Rs. 15,000/- per month. There is nothing on record to suggest that the deceased was earning Rs. 15,000/- per month. The Tribunal has not rejected plea of the claimants that the deceased was working as a conductor. However, the Tribunal has assessed income of the deceased at Rs. 12,000/- per month as per the Deputy Commissioner's rates. The Deputy Commissioner's rate are meant for payment of salary to employees in various government departments out of contingency fund. For assessing income in cases of claim under Motor Vehicles Act, the Tribunal may seek guidance from the minimum wage fixed by the government in the Department of Labour. Taking into consideration plea of the claimants coupled with notification issued by the State of Haryana fixing minimum wage with effect from 1.1.2017, interest of justice would be served if income of the deceased is assessed at Rs. 8,500/- per month. The Tribunal has rightly applied addition in income for future prospects, deduction for personal expenses and multiplier for computing loss of dependency and the same are affirmed. In this manner, loss of dependency is calculated at Rs.12,85,200/- $[8500 \times 12 \times 18 = 18,36,000 + 7,34,400 (40\%) = 25,70,400 - 12,85,200 (50\%)]$.

Compensation of Rs. 30,000/- allowed under conventional heads is correct and affirmed.

Total compensation is Rs. 13,15,200/- and compensation allowed by the Tribunal is reduced to the extent of Rs. 5, 29, 200/-.

Perusal of the award would reveal that the Tribunal has attributed contributory negligence to both the vehicles i.e. vehicle bearing No. HP-64-B -0367 (hereinafter to be referred to as “the offending vehicle”) and bearing No. HR-55-V-6803 which was driven by Mohd. Nasir son of Noor Hassan in which the deceased was sitting in the cabin behind the driver's seat. For this reason, the Tribunal has held the claimants to be entitled to 50% amount from the owner and insurer of aforesaid offending vehicle.

The Tribunal has failed to appreciate that there is difference between composite negligence and contributory negligence. Even if both the vehicles involved in the occurrence are to be attributed negligence, it would be a case of composite negligence of two vehicles and the claimants have been given liberty in law to recover compensation from either of the joint tortfeasors. In the case at hand, the driver, owner or/and insurer of vehicle No. HR-V-55-6803 are not a party, therefore, there was no occasion for the Tribunal to attribute negligence to driver of said vehicle namely Mohd. Nasir without providing an opportunity to be heard in the matter. The Tribunal has grossly erred by attributing negligence to the aforesaid vehicle and further denying the claimants of their right to claim entire compensation from the owner and insurer of the offending vehicle. That being so, findings of the Tribunal holding the claimants entitled to only 50% of the assessed amount from the appellant and respondent No. 5 cannot be allowed to sustain and accordingly modified. The claimants shall be entitled to recover the entire compensation assessed by this Court from

the respondents before the Tribunal who are jointly and severally liable to pay the same.

In view of what has been discussed hereinbefore, the appeal stands disposed of in the aforesaid terms. A copy of the order be sent to the claimants for necessary information.

Before parting with this order, it is pertinent to mention that compensation has been reduced without notice to the claimants. The claimants would be at liberty to file an application before this Court if they have any grievance to express. It is further clarified that any observations made hereinbefore shall not cause prejudice to the claimants if they prefer an appeal for enhancement.

(Rekha Mittal)
Judge

17.9.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No