

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

-.-

FAO 906 of 2018 (O&M)
Date of decision: 15.02.2018

The New India Assurance Co.

..... *Appellant*

Versus

Rani and others

..... *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Ms Anamika Mehra, Advocate
for the appellant

-.-

Rekha Mittal, J. (Oral)

The appellant-insurance company has filed the appeal to assail award dated 07.10.2017 passed by the Motor Accidents Claims Tribunal, Kaithal (hereinafter to be referred as 'the Tribunal') whereby compensation has been awarded on account of death of Rajender Kumar son of Jogi Ram in a motor vehicular accident that took place on 10.12.2016.

Counsel for the appellant has submitted that appeal has been preferred to assail quantum of compensation assessed by the Tribunal as well as to assert right of recovery against the insured. It is argued that Tribunal has assessed income of the deceased by treating him as an unskilled worker but the Tribunal has allowed benefit of future prospects at the rate of 30% as against 25% as per judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270***. Compensation awarded under conventional heads is liable to be restricted to Rs.70,000.00 in the light of aforesaid judgment.

The second submission made by counsel is that as driving licence possessed by Prince Pal, driver of the offending vehicle did not

contain an endorsement of transport, he was not authorized to drive the vehicle in question which is being used for commercial purposes. The insured is guilty of committing breach of terms and conditions of contract of insurance entitling the insurance company to press for recovery against the insured after indemnifying the claimants.

Counsel has also submitted that evidence led by the claimants to discharge onus of issue No. 1 is not sufficient as claimants did not examine any of the persons who were travelling on ill-fated motor cycle on its pillion seat.

I have heard counsel for the appellant and perused the paper book particularly the award impugned.

I find merit in contention of the appellant that in the light of aforesaid judgment, claimants are entitled to benefit of future prospects at the rate of 25%. The multiplier applied by the Tribunal is affirmed. In this view of the matter, loss of dependency comes to Rs.11,34,000.00 (Rs.13,60,800/- *i.e.* 8,100 x 12 x 14 + Rs.3,40,200/- (25% future prospects) – Rs.5,67,000/- (1/3rd deduction).

Under conventional heads, claimants shall be entitled to Rs.70,000.00, in the light of judgment of Hon'ble the Supreme Court in *Pranay Sethi's* case (supra), detailed hereunder:-

Loss of consortium to widow	Rs.40,000.00
Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation comes to Rs.12,04,000.00. The compensation awarded by the Tribunal is reduced to the extent of Rs.4,00,360.00.00 (Rs.16,04,360 – Rs.12,04,000)

The plea of the appellant that driver was not authorized to drive the car used as a commercial vehicle for want of an endorsement of transport is misconceived and liable to be rejected in the light of judgment of Hon'ble the Supreme Court ***Mukund Dewangan vs Oriental Ins.Co.Ltd. 2017 (7) Scale 731***. The plea raised by the insurance company to challenge findings of the Tribunal on issue No. 1 is devoid of merit and is accordingly rejected.

No other point has been raised.

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

Before parting with the order, it is pertinent to mention that compensation has been reduced to the extent of Rs.4,00,360.00 without notice to the respondents. However, claimants would be at liberty to file an application before this Court if they have any grievance to express. It is clarified that any observations made herein before shall not cause prejudice to the claimants if they prefer an appeal for enhancement.

As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

(Rekha Mittal)
Judge

15.02.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No