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

**FAO No.742 of 1991 (O&M)**
**Date of Decision: January 22, 2019.**

Shanti Devi and others

**..........APPELLANT(s).**

**VERSUS**

Sunil Kumar and others

**........RESPONDENT(s).**

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. A.P. Bhandari, Advocate
for the appellant (s).

Mr. Neeraj Khanna, Advocate
for respondent No.3-insurance company.

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**SURINDER GUPTA, J.**

This is appeal against the award dated 05.03.1991 passed by Motor Accident Claims Tribunal, Faridabad (later referred to as the tribunal), whereby compensation of ₹72,000/- was allowed for the death of Kharaiti Lal, aged about 40 years in a motor vehicle accident with Truck bearing registration No.HRP-4259 (later referred to as 'offending vehicle').

As the only issue involved in this appeal relates to quantum of compensation as awarded by Tribunal, detailed facts of the case are being skipped for the sake of brevity.

The tribunal considered the deceased as a daily wager and assessed his income as ₹600/- per month as per the suggestion given to widow of the deceased by the insurance company and then applied the multiplier of 15 after making deduction of 1/3rd from the income of the deceased towards his personal expenses.

Learned counsel for the appellants has argued that the accident had taken place in the year 1990. The claimants have alleged that deceased was earning ₹3000/- per month by doing the job of rickshaw pulling, drum beating and also making collection on Saturdays at the road crossings as '*Shanichari'*. Even a daily wager was earning more than ₹35/- per day in the year 1990. Even if the deceased is considered as daily wager, his income could be taken as ₹1000/- per month. The claimants are entitled to addition in the income of the deceased towards loss of future prospects as per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009***. The tribunal has also not allowed any compensation under the conventional heads. He further points out towards the apportionment of liability to pay compensation to the claimants between the insurer and the driver of the offending vehicle in ratio of 50:50 and has argued that the tribunal has concluded that there was no lapse on the part of insured in employing the driver, as such, the apportionment of liability to pay compensation between insurer and the driver is not sustainable. The claimants are entitled to recover the entire amount of compensation from the insurer.

Learned counsel for respondent No.3-insurance company has argued that no evidence regarding income of the deceased was produced. The accident had taken place in the year 1990, as such, the tribunal has rightly taken income of the deceased as ₹600/- per month and applied multiplier as per the age of the deceased. The driving licence of driver of the offending vehicle was proved to be fake, as such, the order of the tribunal apportioning the liability to pay compensation between the insurance company and driver call for no interference.

The accident took place in the year 1990. Though the tribunal has discussed that the remuneration of the labour at that time was ₹25/- per day but that assessment is not based on any document. Even by applying the guess work, it can be presumed that a daily wager could earn ₹35/- per day at that time. I accept the submission of learned counsel for the appellant that the income of the deceased can be taken as ₹1000/- per month. As per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra),*** the claimants are entitled to 40% addition in his income towards loss of future prospects, keeping in view the age of deceased between 36 to 40 years. The deceased left behind 8 dependants, as such, 1/5th of his income is to be deducted towards his personal expenses as per the law settled by Hon'ble Apex Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121***. The tribunal has not allowed any compensation under the conventional heads. Keeping in view the fact that the accident had taken place in the year 1990 and taking note of the price index prevailing at that time, claimants are entitled to a lump sum amount of ₹20,000/- under the heads, loss of estate, loss of consortium and funeral expenses.

In view of my above discussion, the compensation to which the claimants are entitled, is reassessed as follows:-

| *Sl.No.* | *Heads* | *Calculation* |
|---|---|---|
| (i) | Income of the deceased | ₹1000 per month |
| (ii) | 40% of above (i) to be added as future prospects | (₹1000+₹400)= ₹1400 per month |
| (iii) | Deduction of 1/5th towards personal expenses of the deceased | (₹1400-₹280)= ₹1120 per month |
| (iv) | Compensation after multiplier of 15 is applied | (₹1120X12X15)= ₹201600 |
| (v) | Lump Sum compensation under conventional heads i.e. loss of consortium, loss of estate and funeral expenses | ₹20000 |

| *Sl.No.* | *Heads* | *Calculation* |
|---|---|---|
| *Total* | | ₹2,21,600/- |

The tribunal apportioned the liability to pay the compensation between the insurer and the driver of the offending vehicle in the ratio of 50:50 with the observation that the owner of the offending vehicle acted in bona fide manner and entrusted the vehicle to a driver, who had shown him a licence allegedly issued by the Licensing Authority. While making these observations, the tribunal took note of the statement of owner of the offending vehicle, who appeared as RW2 and had stated that driving licence Ex.R1 was shown to him by the driver of the offending vehicle at the time of employing him. He believed it to be correct and entrusted the vehicle to him. His statement was also corroborated by another witness Ravinder Nath RW3, who had deposed that Sunil Kumar driver of the offending vehicle was possessing a driving licence and used to drive vehicles. The driving licence Ex.R1 was also on the prescribed format and this fact was admitted by Licence Clerk Om Parkash RW7. Looking into the conduct of the owner, the tribunal concluded that the owner had acted in a bona fide manner and had no intention to violate the terms of insurance policy. While concluding on this issue, the tribunal held as follows:-

> "In view of this, I hold that Insurance Co. is not absolved for the bonafide act of the owner. They must meet the liability of the owner from whom they had received the required premium."

In view of the above observation of the tribunal, apportionment of liability to pay 50% of the award amount on the driver of the offending vehicle is not legally tenable. The contract of insurance was between insurer and the insured. Though the driver is also liable as tortfeasor but the ultimate liability is of the owner of the vehicle. Keeping in view the fact that the offending vehicle was duly insured, the insurance company was under all liability to indemnify the insured.

As a sequel of my above discussion, this appeal has merits and the same is allowed. The award of the tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from ₹72,000/- to ₹2,21,600/- for death of Kharaiti Lal. The claimants shall be entitled to recover the entire amount of compensation from the insured i.e. New India Assurance Company Ltd-respondent No.3. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the appeal till actual realisation. The amount of enhanced compensation shall be apportioned between the claimants as follows:-

| | | |
|---|---|---|
| (i) | Appellant-claimant No.1-widow | : 51% |
| (ii) | Appellants-claimants No.2 to 8 | : 7% each |

The claim petition was filed in the year 1990, as such, all the minor appellants-claimants must have attained the age of majority by now. Respondent-insurance company will deposit the shares of appellants-claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal. In case of demise of any of above claimant(s) before his/her share of compensation is disbursed, the same shall be apportioned equally amongst other surviving claimants.

**( SURINDER GUPTA )**
**JUDGE**

**January 22, 2019.**
*Sachin M.*

***Whether speaking/reasoned: Yes/No***

***Whether Reportable: Yes/No***