

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

FAO-1279-2001 (O&M)

Date of Decision: October 22, 2019

Smt. Rajo and others

Appellants

Versus

Shri Bhagwan and others

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. N.C. Kinra, Advocate, with
Ms. Akansha Yadav, Advocate,
for the appellants.

Mr. M.S. Rana, Advocate
for respondent No.1.

None for respondent Nos. 2 to 5.

Mr. Sandeep Jasuja, Advocate
for respondent No.3.

Mr. Vinod Chaudhari, Advocate
for the Insurance Company.

Mr. Pramjit Singh, AAG, Haryana
for respondent Nos. 6 and 7.

JAISHREE THAKUR, J. (Oral)

This appeal seeks to challenge award dated 06.02.2001 passed
by the Motor Accident Claims Tribunal, Rohtak, wherein the appellants

herein have been allowed compensation of ₹3,07,200/- on account of death of Kiraru- the husband of the appellant.

In brief, the facts are that on 04.07.1999 at around 4.00 p.m. when a jeep bearing number HR12P-0358 driven by Sunil dashed into a bus bearing No. HR-26A-1342 driven by respondent No.3-Subhash Chander. Due to this accident, the deceased-Kiraru suffered multiple injuries and died on his way to PGIMS, Rohtak. An FIR was registered under Sections 279, 304A of IPC with police station City Bahadurgarh of the aforesaid accident. With these averments, claim petition was filed by the widow and the children of the deceased on the ground that the driver of the jeep was negligent and responsible for causing the accident. The evidence was adduced and the Tribunal came to hold that the jeep being driven by the respondent caused the accident in which the deceased died apart from injuring several other passengers. The Tribunal allowed compensation taking his income as that of a skilled labourer at ₹2500 per month based on the minimum wages applicable at the relevant time. His age was assessed as 35 years based on the post-mortem report and thereafter a multiplier of 16 was allowed computing the compensation payable. It was held that the claimants would be entitled to ₹3,07,200/-. The Tribunal further determined the liability of paying the compensation and passed the award in favour of the petitioners and against respondent Nos. 1 and 2 jointly and severally against Sh. Bhagwan-driver of the offending vehicle and Sh. Sunil S/o Dharam Singh, owner of the vehicle. At the same time, the Insurance company and Subhash Chander-driver of the Haryana Roadways bus were absolved. Aggrieved against the inadequate compensation, the instant

appeal has been preferred. Mr. N.C. Kinra, learned counsel for the appellant claimants assails the award only on the ground of inadequate compensation as allowed. It is argued that the award is not in consonance with the judgment as rendered in *National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009*.

Whereas learned counsel appearing on behalf of the respondents would argue that there is no infirmity with the award so passed.

Counsel for the owner/respondent No.3 argues that the award of the Tribunal would not be sustainable as the Insurance Company has been absolved of the liability on the ground that the driver of the offending vehicle at the time of the accident was driving without the authority of the owner nor was he employed by respondent No.2. It is argued that once a vehicle is insured, the liability ought to be fastened on the Insurance Company.

Whereas learned counsel for the Insurance Company argues that there is no infirmity in the award so passed as the Tribunal has correctly taken into account that the jeep was being driven without the authority of respondent No.2 and moreover, the driver was driving the jeep loaded with 30-35 passengers which is against the terms of the policy of Insurance Company.

I have heard learned counsel for the parties and gone through the award of the Tribunal. Admittedly an accident took place which is not in dispute. The only question that arises is whether inadequate compensation has been allowed. The Tribunal, after examining the evidence produced by the respective parties held that the deceased was

35 years of age and was earning ₹2500/- per month. The Tribunal deducted 1/3rd towards personal expenses of the deceased, which is not correct as it should have been taken as 1/4th as the dependents are four in number. However, in the absence of the documentary evidence with regard to the actual income of the deceased, the Tribunal has rightly taken the income of the deceased as ₹2500/- per month. Similarly the Tribunal while taking the age of the deceased as 35 years rightly applied the multiplier of 16. However, increase in income on account of future prospects at the rate of 40% and other conventional heads are required to be reckoned, keeping in view the judgment of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009**. Therefore, compensation payable to the appellants is re-worked and tabulated as under:-

Sr. No.	Heads of claim	Calculation
1	Name of the deceased	Kiraru
2	Date of accident	04/07/99
3	Age of the deceased	35 years
4	Monthly income of the deceased	2500/- per month
5	40% of (iv) is to be added towards future prospects	(2500+1000) =3500/-
6	1/4 th of (v) above deducted towards personal expenses	(3500-875) =2625/-
7	Compensation calculated after applying the multiplier of 16	2625x16x12=504000/-
8	Conventional heads	70,000/-
9	Total : (7+8)	₹5,74,000/-

As a sequel of my discussion above, the appeal is partly

allowed. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹5,74,000/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of filing of the appeal in this Court till the date of payment. The claimants will share the amount of compensation as per the award of the Tribunal.

October 22, 2019
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No