

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

CM No. 9782 CII of 2019 in/and
FAO No. 2825 of 2019 (O&M)
Date of decision: 2.5.2019

The Oriental Insurance Company Limited

...Appellant

Versus

Smt. Santresh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. D.P. Gupta, Advocate,
for the appellant.

JAISHREE THAKUR, J.

CM No. 9782 CII of 2019

This is an application that has been filed for condonation of 61 days' delay in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay in filing the appeal is condoned.

CM stands disposed of.

Main case

This appeal seeks to challenge the award dated 1.11.2018 passed by the Motor Accident Claims Tribunal, Jagadhri, wherein the respondents/claimants herein have been allowed compensation of ₹17,23,048/- on account of death of Deepak @ Deepu.

In brief, the facts are that on 5.10.2017 deceased Deepak @

Deepu and Bijender were on their way from Chhachhrauli to Jagadhri on a motor cycle No. UP-19-C-5944, who were being followed by Roshan Lal, brother of Deepak @ Deepu on his motor cycle. The motor cycle was being driven by Deepak @ Deepu. When they reached near Neelam Petrol Pump located on Chhachhrauli-Jagadhri road, they were hit from behind by a truck bearing registration No. HR-58A-5383, driven by respondent No.5 in rash and negligent manner, as a result of which, both of them fell down on the road, received multiple injuries and ultimately succumbed to the injuries after some days. It was alleged that the accident took place due to the rash and negligent driving of respondent No.5 and consequently FIR 1479 dated 5.10.2017 under Sections 279, 337 and 304-A IPC came to be lodged with the Police Station City Jagadhri. With these averments, claim petition was filed by the wife, parents and elder brother of the deceased claiming they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was earning ₹50,000/- per month as labourer with a contractor Ganpati Sales Corporation and also by running a milk diary.

The claim petition was contested by the appellant, inter-alia, taking preliminary objections that the petition was not maintainable, no cause of action has accrued etc. Issues were framed and thereafter oral as well as documentary evidence was led by the parties.

After scrutiny of the evidence brought on record, the Tribunal held that the the accident was the result of rash and negligent driving of the truck bearing No. HR-58-A-5383 being driven by respondent No.5 and on

assessment of the facts and evidence before it allowed compensation of ₹17,23,048/- which has been now challenged in the instant appeal.

Learned counsel for the appellant submits that the amount of compensation awarded by the Tribunal is excessive. It is submitted that the Tribunal has erred in assessing the income of the deceased at ₹8,200/- per month, particularly when there is no evidence on the record to establish that fact. It is further submitted that the multiplier of 17 ought to have been applied instead of 18 as has been applied by the Tribunal.

I have heard learned counsel for the appellant and have perused the impugned award.

The Tribunal, after examining the evidence produced by the respective parties held that the deceased was 25 years of age and was earning ₹8200/- per month. The Tribunal further following the law laid down by the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009**, added 40% towards future prospects and while holding that the claimants i.e. wife and the mother were dependent upon the deceased, deducted 1/3rd towards personal and living expenses of the deceased. In the absence of the documentary evidence with regard to the actual income of the deceased, the Tribunal has rightly held that the deceased ought to have been earning ₹8200/- per month, as per the minimum wages prevailing at the time of occurrence. The Tribunal following the guidelines laid down by the Constitutional Bench of Hon'ble the Supreme Court in **National Insurance Company Limited (supra)** has rightly applied the multiplier of 18 and also

granted the compensation under the conventional heads. The award passed by the Tribunal is within the four corners of the guidelines laid down by the Constitutional Bench of Hon'ble the Supreme Court in **National Insurance Company Limited (supra)**. The findings recorded by the Tribunal are based on the proper appreciation of the evidence brought on record and cannot be said to be perverse. The award passed by the Tribunal is just and proper and there is no scope for interference in the same.

Consequently, the appeal filed by the appellant being devoid of merit stand dismissed.

2.5.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No