

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

F.A.O. No. 2257 of 2001 (O&M)
DATE OF DECISION :- October 29, 2019

Smt. Darshna Kumari and others

...Appellants

Versus

Sohan Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Vinod Gupta, Advocate for the appellants.

Mr. R.K. Bashamboo, Advocate for respondent No. 3.

Briefly stated the facts of the case are that on account of death of Kharaiti Lal, aged about 55 years, statedly engaged in avocation of agriculture, in a road side accident, which took place on 17.7.1994 at about 9.00 A.M., in the area of Police Station Kotputli at Rohtak to Jaipur road allegedly on account of rash and negligent driving of Truck bearing registration No. DIG-1136 by respondent No. 1 Sohan Lal alias Sohan Singh, legal representatives of deceased namely his widow Smt.Darshna Kumari, daughter Ashok Kumar, sons Vinod Kumar and Ajay Kumar and two married daughters Smt. Shashi and Smt. Sushma had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Sohan lal-driver, Harchand-owner and The Oriental Insurance Co. Ltd, New Delhi-insurer of Truck No. DIG-1136 (hereinafter referred to as the offending Truck), claiming compensation to the tune of Rs.12 lacs.

On being put to notice only respondent No. 3-Insurance Company had appeared before Motor Accident Claims Tribunal, Hisar whereas respondents

No. 1 and 2 did not appear despite service as such they were proceeded against ex-parte. Respondent No. 3 Insurance Company contested the claim petition raising various legal objections taking statutory defences contending that it was not liable to pay any compensation.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence. On conclusion of trial the Motor Accident Claims Tribunal, Hisar vide Award dated 1.3.2000 accepted the claim petition and awarded compensation of Rs.1,26,000/- to petitioner- claimant Smt. Darshna Kumari payable by all the three respondents jointly and severally along with interest at the rate of 12% per annum from the date of filing claim petition till actual realization.

The claimants were not satisfied with the amount of compensation awarded to them by the Tribunal and they have approached this Court by way of filing an appeal notice of which was given to the Insurance Company, which had put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on analysis of the evidence adduced before it has reached on the conclusion that respondent No. 1 Sohan Lal was responsible for the mishap by his rash and negligent driving of the offending truck resultantly Sh. Kharaiti Lal had suffered injuries to which he had succumbed. The finding is proper and appropriate and does not call for any interference. As such respondent No. 1 Sohan Lal being driver, Harchand-owner and The Oriental Insurance Co. Ltd, New Delhi (insurer of the truck) were rightly held to be liable to pay the compensation to the legal representatives of the deceased their liability being joint and several.

The Tribunal had taken the age of the deceased to be 55 years and his avocation as an agriculturist. Though as per version of the claimants, he was owning 15 kilas of land only. Photocopies of sale deed to substantiate those assertions had been produced in evidence. Therefore, the Tribunal had rejected the contention of the claimants that he was earning Rs.10,000/- to 12,000/-per month from the avocation of an agriculturist and sale and purchase of cattles. Of course no fault can be found with such approach of the Tribunal. The Tribunal has taken the deceased to be an unskilled labourer assessing his monthly income to Rs.1800/- per month. However, in my view the income so taken is some of the on lower side and it would be appropriate to take such income as Rs.2000/- per month.

The Tribunal, however, has not granted any amount of compensation towards future prospects. In terms of the judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' an addition of 10% of the established income is to be made. Doing that the monthly income of the deceased is worked out to be Rs.2200/- (2000 + 200).

Considering the fact that the deceased is survived by his widow and five children, two of his daughter being married, the Tribunal had deducted 50% of the amount on account of personal and living expenses of the deceased. In my view, the Tribunal fell in error in doing so since the deceased had left behind his widow as well as three unmarried children. Though the Tribunal has observed that children of the deceased were married but it cannot be said that the deceased did not give them any financial assistance at that time in the form of gifts or otherwise. Therefore, it would be proper and appropriate to deduct $\frac{1}{3}^{\text{rd}}$ of the amount towards personal and living expenses. Doing that the amount comes to Rs.733/- ($2200 \times \frac{1}{3}^{\text{rd}}$). In that way the dependency of the claimants comes out to Rs.1467/- ($2200-733$). The annual dependency comes out to Rs.17,604/- (1467×12). The

Tribunal has applied properly multiplier of 11. Doing that the amount comes out to Rs.1,93,644/- (17,604 x 11). In view of ratio of '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' the claimants are entitled to get total 70,000/- under conventional Heads. Making addition of that amount the total compensation amount comes out to Rs.2,63,644/- (1,93,644 + 70,000). The Tribunal has awarded compensation of Rs.1,26,000/-. In that way, the enhanced amount of compensation comes out to Rs.1,37,644/-. Accordingly, the appeal is allowed partly. The impugned award is modified and a sum of Rs.1,37,644/- as enhanced compensation is awarded to the claimants payable by the respondents jointly and severally with interest at rate of 7.5% per month from the date of filing of appeal till the actual realization. The enhanced amount shall be apportioned among the claimants proportionately in terms of the direction already issued by the Tribunal in the impugned award.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

October 29, 2019
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No