

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

F.A.O. No. 1983 of 2006

DATE OF DECISION :- September 06, 2019

Smt. Santro and others

...Appellants

Versus

Suba Ram and others

...Respondents

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

Present:- Mr. Vikas Kumar, Advocate
for Mr. Tara Chand Dhanwal, Advocate for the appellants.

Mr. Ravinder Arora, Advocate
for respondent No. 3-Insurance Company.

On account of death of Rajesh, in a motor vehicular accident which took place on 7.11.2001 at about 10.00 P.M., in the area of Village Charkhi, statedly on account of rash and negligent driving of Truck bearing registration No. HR-47-2892 by respondent No. 1 Suba Ram, legal representatives of deceased namely his widow Smt. Santro, aged about 21 years, father Balwan Singh, and mother Smt. Roshani Devi had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Suba Ram-Driver, Prem Chand-owner and The New India Assurance Co. Ltd, Rewari-insurer of Truck bearing registration No. HR-47-2892 (hereinafter referred to as the offending Truck), claiming compensation to the tune of Rs.10 lacs.

On notice, all the three respondents appeared and filed written statements contesting the claim petition.

After trial, the claim petition was accepted by Motor Accident Claims Tribunal (Fast Track Court), Bhiwani vide award dated 30.9.2005 and compensation of Rs.2,35,000/- with interest at the rate of 7% per annum from the date of filing of the claim petition till actual realization was awarded to the claimants. However, respondent No. 3- Insurance Company was given a right to recover the amount from respondent No. 2 Prem Chand for the reason that respondent No. 1 was not having a valid and effective driving license on the date of accident and license produced by him Ex. R1 was issued after the date of accident.

Feeling dissatisfied with the Award the claimants have approached this Court by way of filing an appeal, notice of which was given to the respondents, however, only respondent-Insurance Company has appeared through counsel.

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

The Tribunal on appreciation of the evidence produced by both the parties had taken age of the deceased to be 22 years as mentioned in post mortem report Ex.P2. His monthly income was assessed to be Rs.2400/- However, no addition was made towards future prospects. In terms of the judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' where age of the deceased was below 40 years an addition of 40% of the established income is to be made. Doing that the monthly income of the deceased is calculated as Rs.3360/- (2400 +

960) [2400+40% of 2400 is +960=3360].

The Tribunal, had deducted 50% of the amount towards personal and living expenses of the deceased. However, the Tribunal obviously fell in error in doing so since in terms of the observations made in a land mark authority “*Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3)RCR Civil 77*” by the Apex Court where number of dependent family members is 2 to 3, the deduction should be 1/3rd. Doing that the amount monthly dependency of the claimants comes to Rs.2240/- (3360-1120). The annual dependency comes out to Rs.26,880/- (2240 x 12). The Tribunal has applied multiplier of 16. But in terms of judgment “*Smt. Sarla Verma and others vs. Delhi Transport Corporation*” (supra) keeping in view the age of the deceased, multiplier of 18 is to be used. By applying the multiplier of 18 the total compensation is worked out to Rs.4,83,840/- (26,880 x 18). The Tribunal has awarded a sum of Rs.4600 on account of transportation of dead body and performance of last rites. 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 those Heads. Making addition of that amount the total compensation amount comes out to Rs.5,53,840/- (4,83,840 + 70,000). The Tribunal has awarded compensation of Rs.2,35,000/-. In that way, the enhanced amount of compensation comes out to Rs.3,18,840/-. The impugned award is modified and a sum of Rs.3,18,840 /- as enhanced compensation with interest at rate of Rs.7.5% per month from the date of filing of appeal till the actual realization is awarded to the claimants. As directed in the original Award, the Insurance Company shall pay the

enhanced amount to the claimants having a right to recover the said amount from respondent No. 2-insurer. As regards the apportionment of the enhanced compensation it shall be as follows :-

1. Smt. Santro, widow of deceased – 40%
2. Sh. Balwan Singh, father of deceased – 20%
3. Smt. Roshni Devi, mother of the deceased – 40%

The amount as per share be deposited in the bank accounts of the claimants by the Insurance Company and they would be then entitled to withdraw the same.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

September 06, 2019
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No