

In the High Court of Punjab and Haryana at Chandigarh

**FAO- 4364 of 2019(O&M)
Date of Decision: 11.7.2019**

New India Assurance Company Limited

---Appellant

versus

Rajbala and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Paul S.Saini, Advocate
for the appellant**

Rekha Mittal, J.

CM No. 14329 -CII of 2019

Prayer in this application is for condoning delay of 9 days in filing the appeal.

Heard.

Allowed as prayed for. Delay of 9 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO- 4364 of 2019

Challenge in the present appeal has been directed against award dated 12.2.2019 passed by the Motor Accidents Claims Tribunal, Rohtak (in short “the Tribunal”) whereby compensation has been assessed on account of death of Renu in a motor vehicular accident that took place on 27.5.2017.

Counsel for the insurance company would inform that appeal has been preferred primarily to challenge findings of the Tribunal on issue

No. 1 and quantum of compensation.

With regard to findings on issue No. 1, it is argued that as the deceased was travelling in an auto rickshaw bearing No. HR-46D-2431 that carried passengers more than its permissible capacity and accident is head on collision between auto ricksha and truck No. PB-10 CC/6774, the present is a case of composite negligence of two vehicles involved in the occurrence, therefore, respondents before the Tribunal have wrongly been saddled with liability to pay entire compensation to the claimants. He would further argue that the Tribunal, at least, should have decided the extent of negligence attributable to driver of auto ricksha.

So far as quantum of compensation, the sole submission made by counsel is that application for compensation has been filed by parents-in-law and minor children of deceased but father-in-law of deceased is not entitle to loss of dependency particularly in the circumstances that he owns agriculture land.

I have heard counsel for the appellant and perused the paper book particularly the award.

Indisputably, the present is not a case where any negligence has been sought to be attributed to deceased. Assuming that the accident occurred because of negligence of two vehicles involved in the occurrence, claimants are at liberty in law to claim compensation from either of the joint tort-feasors. Contention raised by counsel with regard to obligation of the Tribunal to decide the extent of negligence attributable to driver of auto ricksha is misconceived particularly in the circumstances that driver, owner and insurer, if any, of auto ricksha have not been impleaded as a party. In this view of the matter, the first submission made by counsel is not

meritorious and accordingly rejected.

This brings the court to quantum of compensation assessed by the Tribunal. Admittedly, the deceased was a teacher with NIC Senior Secondary School, Assan and her salary has been proved. The deceased left behind two minor children aged 9 and 7 years claimants No. 3 and 4 respectively. The Tribunal has not extended benefit for services rendered by deceased to manage the household affairs and looking after the minors. Counsel may be right in his submission that father-in-law of deceased is not entitle to loss of dependency with regard to earning of the deceased but he would certainly be entitle to services of deceased as a house maker being father-in-law. In case the claimants are extended benefit of services of deceased as a house maker as well, compensation is assessed after allowing cut for personal expenses to the extent of 1/3rd, it would be more than what has been allowed by the Tribunal. In the given circumstances, I do not find any reason to interfere in assessment made by the Tribunal. However, in case the claimants file an appeal seeking enhancement of compensation, the insurance company would be at liberty to raise issue with regard to deduction for personal expenses and income taken into account for computing loss of dependency.

In view of what has been discussed hereinbefore, finding no merit, the appeal is dismissed in limine.

(Rekha Mittal)
Judge

11.7.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No