

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

**F.A.O. No. 3532 of 2011**

**DATE OF DECISION :- May 03, 2019**

**The New India Assurance Company Ltd.**

**...Appellant**

**Versus**

**Veeran and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE H.S. MADAN**

**Present:-** Mr. Neeraj Khanna, Advocate for the appellant.

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On account of death of Sat Pal, in a road side accident, which took place on 8.5.2009 at about 8.00 P.M., in the area of G.T. Road, Police Station Sadar Gurdaspur statedly due to rash and negligent driving of Maruti 800 Car bearing No. PB-35-A-0032, driven by Sanjeev Kumar-respondent No. 1, his legal representatives namely Veeran-wife, Rajinder Kumar and Raj Kumar-sons, Madhu Sharma, Rajni Sharma alias Suman Sharma and Sonia Sharma daughters had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Sanjeev Kumar (driver), Tara Chand (owner) and The New India Assurance Co. Ltd., Pathankot-insurer of Maruti 800 Car bearing No. PB-35-A-0032, claiming compensation of Rs.15 lacs.

On notice, all the three respondents appeared and offered a contest, however, Motor Accident Claims Tribunal, Gurdaspur vide award dated 1.2.2011 accepted the application and awarded compensation of

Rs.5,86,000/- with interest at the rate of 9% per annum from the date of filing of claim petition till realization. The amount was apportioned amongst the claimants as per details given in the award. The liability to pay this amount was held to be joint and several upon all the three respondents.

Respondent No. 3-Insurance Company felt aggrieved by the said award and has filed an appeal before this Court, notice of which was given to the claimants-respondents who had appeared in the Court through counsel and cross objections were also filed.

Today, there is no representation on behalf of the claimants/cross objectors. Earlier a legal aid counsel had been got appointed to represent them but she has not appeared in the Court today.

I have learned counsel for the appellant besides going through record.

Learned counsel for the appellant has submitted that the Tribunal had wrongly taken age of the deceased to be 59 years when as per contents of the F.I.R. and as entered in the post mortem report his age was 65 years and even wife of deceased Mrs. Veeran appearing as PW1 in her cross examination has stated that the deceased was born in the year 1943 wherein the accident having taken place on 8.5.2009. It means that the deceased was aged about 66 years at the time of his death in a road side accident, therefore, the age should have been taken as such.

I have gone through the award with the assistance of learned counsel for the appellant and I find that the Tribunal has taken age of the deceased to be 59 years merely for the reason that the claimants had asserted so. Obviously the Tribunal fell in error in doing for taking age of the

deceased to be 59 years wherein from the documentary evidence it came out to be 65-66 years. Therefore, I take age of the deceased to be 65 years. The Tribunal has taken the income of the deceased to be Rs.6,000/- per month from avocation of agriculture and dairy farming though the claimants had asserted that his such income was Rs.15,000/-.

I find that the Tribunal was justified in doing so. Keeping in view the judgment ***“Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3)RCR Civil 77”*** in that eventuality deduction of 1/4<sup>th</sup> should have been made instead of 1/3<sup>rd</sup> as has been done by the Tribunal and thereby the amount comes to Rs.4500/-. The annual dependency is thus worked out to Rs.54,000/- (4500 x 12). Considering the age of the deceased to be 65 years, multiplier of 7 is to be used. Doing that the total compensation is worked out to Rs.37,8000/- (54000 x 7). Doing that the dependency of claimants comes out to Rs.3,78,000/- (4500 x 12 x 7). Since he was aged more than 60 years, no addition is to be made towards future prospects. The claimants are entitled to get a sum Rs.70,000/- under the conventional Heads. Doing that the total compensation payable is arrived at Rs.4,48,000/- (37,8000 + 70,000). The Tribunal has awarded compensation of Rs.5,86,000/- which is more than the claimants are found to be entitled. The Tribunal has awarded interest at the rate of 7.5%. Therefore, the claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.4,48,000/-. The other terms and conditions in the original award shall remain the same. With such modification, the appeal is allowed partly with costs.

With respect to the cross objections filed on behalf of the claimants for enhancement of compensation amount those have not been filed within time and there is a delay of 200 days in doing so. An application under Section 5 of the Limitation Act for condonation of delay has been moved but I do not see any justifiable reason to condone the delay, therefore, the cross objections are liable to be dismissed on that score. Even on merits, the compensation awarded by the Tribunal is found to be on higher side has been reduced thus no ground is made out to accept the cross objections, therefore, the same are hereby dismissed.

**(H.S. MADAAN)**  
**JUDGE**

**May 03, 2019**  
*p.singh*

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No