

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

F.A.O. No. 3674 of 2011

DATE OF DECISION :- October 01, 2019

Smt. Mamta and others

...Appellants

Versus

Parveen Kumar and others

...Respondents

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

Present:- Mr. Sandeep Goyal, Advocate for the appellants.

Mr. Pawan Kumar Hooda, Advocate for
respondent Nos. 1 and 2.

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

On account of death of Sushil, aged about 34 years stated to be engaged in avocation of agriculture and diary farming earning Rs.15,000/- per month from those avocations, in a road side accident which took place on 20.11.2009 at about 3.00 P.M., statedly on account of rash and negligent driving of tanker bearing registration No. HR-67-6512 by respondent No. 1 Parveen Kumar, legal representatives of deceased namely his widow Smt. Mamta, minor sons Mohit and Rohit aged about 12 years and 7 years, minor daughter Ms. Monika, aged about 9 years and father Sh. Roda Ram, aged about 70 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Parveen Kumar-driver, Gaje Singh-owner and The Oriental Insurance Co. Ltd, Panipat-insurer of Tanker bearing

registration No. HR-67-6512 (hereinafter referred to as the offending Tanker), claiming compensation.

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

On conclusion of trial the Motor Accident Claims Tribunal, Kaithal vide Award dated 15.12.2010 accepted the claim petition and awarded compensation of Rs.5,96,000/- to the claimants along with interest at the rate of 7.5% per annum from the date of filing of claim petition till actual realization observing that the vehicle was duly insured with respondent No. 3-Insurance Company at relevant time and there was no violation of any term and condition of the Insurance Policy. It was observed that respondent No. 3 would be liable to bear the whole of the liability. The compensation was ordered to be apportioned among the claimants as follows:-

Claimant No. 1	Rs.1,86,000/-
Claimant Nos. 2 to 4	Rs.1,20,000/- each
Claimant No. 5	Rs.50,000/-

The claimants were not satisfied with the amount of compensation awarded to them by the Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as the Tribunal) and has approached this Court by way of filing an appeal, notice of which was given to the respondent who had put in appearance through counsel.

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

A perusal of the Award goes to show that the Tribunal on the

basis of evidence brought on record by the parties had returned a finding that respondent No. 1 Parveen Kumar was the author of the accident by his rash and negligent driving of the offending tanker resulting in causing the injuries to Sh. Sushil to which he succumbed. Such finding is proper and appropriate and does not call for any interference. In view of this finding the driver, owner and the Insurance Company of the offending vehicle are liable to pay compensation to the claimants. The Tribunal considering the age of the deceased to be 34 years in light of the fact that the the claimants could not bring cogent and convincing evidence to show that the deceased was in avocation of dairy and agriculture earning Rs.15,000/- from those avocations took notional income of deceased Rs.4,000/-. However in my view the income taken seems to be on lower side and it would be proper and appropriate to take such income as Rs.6,000/- 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***' 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 worked out to be Rs.8400/- (6000 + 2400).

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 4 to 6, the deduction should be $\frac{1}{4}$ th. Doing that the amount comes to Rs.2100/- (8400 x $\frac{1}{4}$). In that way the dependency of the claimants comes out to Rs.6300/- (8400-2100). The annual dependency

comes out to Rs.75,600/- (6300 x 12). By applying the multiplier of 16 the total compensation is worked out to Rs.12,09,600/- (75600 x 16).

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.12,79,600/- (Rs.12,09,600 + 70,000). The Tribunal has awarded compensation of Rs.5,96,000/-. Therefore, the enhanced amount of compensation comes out to Rs.6,83,600/-. In that way, an additional sum of Rs.6,83,600/- with interest at rate of Rs.7.5% per month from the date of filing of appeal till the actual realization is granted to the claimants payable by the respondents jointly and severally. The enhanced amount shall be apportioned among the claimants proportionately in terms of the direction already issued by the Tribunal in the impugned award. The shares of minor claimants in enhanced compensation be deposited in the form of FDRs with some nationalized bank for the period till they attain majority.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

October 01, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No