IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1008-2012 (O&M)
Date of decision: 17.01.2019

National Insurance Company Ltd.

...Appellant

Versus

Harjit Singh and others

...Respondents

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

Present: Mr. Ashwani Talwar, Advocate with
Mr. Gurpreet Singh, Advocate and
Ms. Ramanjit Kaur, Advocate
for the appellant.

Mr. Rakesh Kumar, Advocate for respondent No.1.

Mr. Harpinder Singh, Advocate for
Mr. A.S. Khinda, Advocate for respondent Nos. 2 & 3.

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H.S. MADAAN, J. (Oral)

On account of death of Ram Singh, aged about 52 years, working as a driver, in a motor vehicular accident which took place on 14.10.2010 at about 11.30 p.m., in the area of Lalli Farm house, Village Chuharwali, Tehsil and District Jalandhar, statedly due to rash and negligent driving of truck No.PB-09-L-9951 by its driver Joga Singh, his son Harjit Singh had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs. 20 lakhs.

In the claim petition, he had impleaded Joga Singh, driver, P.K. and company through its proprietor Sham Sunder Aggarwal, owner and National Insurance Company Ltd., Rupnagar, insurer of truck No. PB-09-L-9951 (hereinafter referred to as the offending truck) as respondents.

After contest, the claim petition was allowed by Motor Accidents Claims Tribunal, Ropar, vide award dated 09.12.2011 and a compensation of Rs.5,34,000/- was granted to the claimant payable by all the three respondents jointly and severally.

Respondent-Insurance Company felt aggrieved by the said award feeling that it was on higher side and has approached this Court by way of filing appeal against the said award.

Notice of the appeal was given to the respondents, who put in appearance in Court through counsel to offer a contest.

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

Learned tribunal by appreciation of evidence adduced before it has taken age of deceased to be 52 years and his monthly income as Rs.4000/-. I do not find any illegality or infirmity therewith. However, in view of the Apex Court authority **National Insurance Company Limited** Vs. **Pranay Sethi and others**, 2017 (4) RCR (Civil) 1009, no addition on account of future prospects has been made. In terms of the ratio of this authority, the deceased being self employed having age of 52 years, an addition of 10% of his income was required to be made. Doing that, monthly income of deceased is calculated to be Rs.4400/-.

A very glaring omission committed by the tribunal is that no amount was deducted towards personal expenses of the deceased. According to learned counsel for the appellant-Insurance Company, deduction of 50% should be made, since in terms of the guidelines laid down by Apex Court in the authority **Smt. Sarla Verma and others** Vs. **Delhi Transport Corporation and Anr.**, 2009(3) RCR (Civil) 77, where the deceased was married and number of dependent members is 2 to 3, deduction towards personal and living expenses should be 1/3$^{rd.}$ However, I am not in agreement with learned counsel for the appellant in that regard, since it is nowhere observed that if the number of dependent member was one, then, deduction should be 50%, though in case of bachelor, it has been so observed. Strangely, there is nothing on record to show whether wife and mother of deceased had predeceased him. They were to be taken as legal heirs and legal representatives but parties are silent in that regard. The tribunal also did not pay any attention to that aspect. However, I proceed to decide the appeal on the basis of material available before me.

Making deduction of 1/3rd of the monthly income of deceased, the dependency of the claimant is worked out to Rs.4400-

1470=2930. The annual dependency comes out to Rs.2930x12=35160. The multiplier of 11 was properly applied by the tribunal, keeping in view the age of the deceased. Doing that the compensation payable is worked out Rs. 3,86,760/-. The petitioner/claimant is entitled to get Rs.15,000/- towards loss of estate and Rs.15,000/- as funeral expenses as held in authority National Insurance Company Limited Vs. Pranay Sethi and others (supra). The total compensation payable comes out to Rs.4,16,760/-.

The tribunal has granted compensation of Rs.5,34,000/- which seems to be on a higher side. Therefore, the appeal is accepted partly and the compensation of Rs..4,16,760/- is ordered to be paid to the claimant by all the three respondents jointly and severally on the same terms & conditions as directed in the original award.

Learned counsel for the appellant has pointed out that in terms of order dated 17.02.2012 passed by this Court, execution of impugned award to the extent of beyond Rs.3,60,000/- has been ordered to remain stayed. Let the balance amount with interest and costs in terms of this award be paid to the claimant at the earliest.

Disposed of accordingly.

17.01.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

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