

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 5341 of 2019 (O&M)

Date of Decision: 30.8.2019

New India Assurance Company Limited

---Appellant

versus

Gurmit Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. R.C.Kapoor, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 21.5.2019 passed by the Motor Accidents Claims Tribunal, Mohali (in short “the Tribunal”) whereby compensation has been assessed on account of death of Jaswinder Singh in a motor vehicular accident that took place on 7.8.2016.

Counsel for the appellant has assailed the award primarily on two counts. It is argued that findings of the Tribunal on issue No. 1 are erroneous and need to be set aside. To bring home his contention, it is submitted that occurrence in question took place on 7.8.2016 but FIR at the behest of Harpreet Singh, claimant No. 2 son of the deceased, was got registered on 8.8.2016 and in the FIR, there is no reference to driver of offending vehicle. It is further argued that on due investigation of the FIR registered by Harpreet Singh, the investigating agency has submitted cancellation report and the said fact has been proved by ASI Kesar Singh

RW1. Further submitted that even driver of the alleged offending vehicle appeared in the witness box and denied that accident was caused by him who has also deposed that he filed a complaint to the police and on enquiry, FIR was cancelled and he is not facing trial.

Another submission made by counsel is that in case findings of the Tribunal on issue No. 1 are affirmed, compensation allowed by the Tribunal may be modified. For this purpose, it is argued that income of deceased assessed by the Tribunal is more than minimum wage available at the relevant time and appropriate multiplier on the basis of age of deceased should be 13 in place of 14.

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

Be that as it may, it is undisputed position of the case that FIR in this case was registered on the second day of occurrence and author of FIR has given particulars of the offending vehicle though name of driver has not been mentioned therein. There is nothing on record suggestive of the fact that Harpreet Singh or his family either had any animosity against driver or owner of offending vehicle or the vehicle has been planted as a result of collusion between the claimants and owner of the offending vehicle in order to extract compensation from insurance company. In the given circumstances, the mere fact that police has prepared a cancellation report in respect of the FIR, is not sufficient to disbelieve testimony of Harpreet Singh when otherwise, counsel for insurance company has failed to point out any tangible materials brought forth in cross examination of Harpreet Singh to discard or disbelieve his testimony. In this view of the matter, I do not find any reason to interfere in findings of the Tribunal on

issue No. 1 which are based upon detailed consideration of materials on record.

This brings the court to quantum of compensation assessed by the Tribunal. Plea of the claimants is that deceased was working as Electrician thereby earning Rs. 20,000/- per month. Tribunal has noticed that claimants have failed to adduce sufficient evidence to prove avocation and income of deceased and as such he was treated as a casual labour. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time, income of deceased is assessed at Rs. 7500/- per month. Addition in income for future prospects and deduction for personal expenses made by the Tribunal are correct and affirmed. However, as the deceased is held to be 48 years of age, admissible multiplier is 13 in place of 14. In this manner, loss of dependency is calculated at Rs. 10,96,875/- [$7500 \times 12 \times 13 = 11,70,000 + 2,92,500 (25\%) = 14,62,500 - 3,65,625 (1/4^{\text{th}})$].

Under conventional heads, compensation is correct and affirmed.

Total compensation is Rs. 11,66,875/- and compensation allowed by the Tribunal is reduced to the extent of Rs. 1,63,125/- (13,30,000- 11,66,875).

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention that compensation has been reduced without notice to the respondents-claimants. The claimants would be at liberty to file an application before this Court if they have any grievance to express. It is further clarified that

any observations made hereinbefore shall not cause prejudice to the claimants if they prefer an appeal for enhancement.

(Rekha Mittal)
Judge

30.8.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No