

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-388-2012 (O&M)

Date of decision: 03.07.2019

Cholamandalam MS General Insurance Co. Ltd.

...Appellant

V/s.

Sheela and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Ms.Vandana Malhotra, Advocate for the appellant.

Mr. Suvir Dewan, Advocate for the
National Insurance Co. Ltd.

RITU BAHRI, J. (Oral).**XOBJC-56-CII-2012**

The cross objection has been filed by the claimaints. The age of the deceased Naresh Kumar has been assessed as 23 years by the Tribunal and the compensation has been assessed as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.3,900/- per month i.e. Rs.46,800/- per year
(ii)	1/4 th of above is deducted as personal expenses of the deceased	46,800-11,700=35,100
(iii)	Compensation after multiplier of 18 applied	35,100 X 18=6,31,800/-
(iv)	Compensation under loss of estate	Rs.10,000/-
(v)	Compensation under loss of consortium	Rs.20,000/-
(vi)	Compensation towards funeral expenses	Rs.5,000/-
(vii)	Compensation towards transportation	Rs.2,500/-
	TOTAL COMPENSATION AWARDED	Rs. 6,69,300/-

The compensation is hereby assessed in view of the judgments passed by Hon'ble the Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77 and ***National Insurance Company Limited Vs. Pranay Sethi and others***,

Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.4,000/- per month
(ii)	40% of (i) above to be added as future prospects	4,000+1600=5600
(ii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	5600-1400=4200
(iii)	Compensation after multiplier of 18 applied	4200 X 12 X 18=9,07,200/-
(iv)	Compensation under loss of estate	Rs.15,000/-
(v)	Compensation under loss of consortium	Rs.40,000/-
(vi)	Compensation towards funeral expenses	Rs.15,000/-
(vii)	Compensation towards transportation	Rs.2,500/-
	TOTAL COMPENSATION AWARDED	Rs. 9,79,700/-

The amount of compensation of **Rs.9,79,700/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The insurance company has to make payment of compensation. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in ***Civil Appeal Nos. 10588-89 of 2018*** titled as ***Sebastiani Lakra & others Vs. National Insurance Company Ltd and another***, 2018(4) RCR (Civil) 837. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly the award stands modified to the above extent and the cross objection is allowed.

FAO-388-2012(O&M)

The insurance company has come up in appeal against the award of the Motor Accident Claims Tribunal (in short 'Tribunal') dated 13.10.2011 whereby two claim petitions have been allowed and the

appellant-insurance company is held liable to make compensation to all the claimants.

Learned counsel for the insurance company has argued that as per the FIR No. 480/13.11.2009 (Ex. P1) it was a case of hit and run and FIR had been registered against the offending vehicle and there was no evidence to prove that the offending truck bearing registration No. HR-61A-1390 was involved in any manner in the accident. The accident took place on 12.11.2009 about 10.00 p.m. Even though the FIR was registered on 13.11.2009, but the vehicle in question was involved after 2 months and there is no eye-witness to this accident and the truck bearing registration No. HR-61A-1390 has been falsely involved in this accident.

A perusal of the award shows that after registration of FIR (Ex.P-1), challan under Section 173 Cr.P.C. was presented against the driver-respondent No. 1. The Tribunal has referred to the judgment passed in the case of *Girdhari Lal V/s. Radhey Shyam*, 1993(2) PLR-109 that presentation of challan is prima facie safe to presume that the accident was occurred on account of rash and negligent driving by the driver. The onus to prove that the accident took place due to rash and negligent driving was on the claimants. The presentation of challan (Ex. P4) was sufficient to return finding on issue No. 1 that truck bearing registration No. HR-61A-1390 was involved in the accident and the driver of that vehicle was driving in a rash and negligent manner. Since the finding on issue No. 1 has been rightly returned by the Tribunal, the appeal of the insurance company is dismissed.

Pending application, if any, also stands dismissed.

(RITU BAHRI)
JUDGE

03.07.2019

Divyanshi

Whether speaking/reasoned

Whether reportable

:
:

Yes/No
Yes/No