

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

FAO-1500-2013 (O&M)

Date of Decision: 25.09.2019

Anita and others

Appellants

Versus

ICICI Lombard General Insurance Company and Others

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- None .

JAISHREE THAKUR, J. (Oral)

This appeal seeks to challenge award dated 18.05.2012 passed by the Motor Accident Claims Tribunal, Rohtak, wherein the appellants herein have been allowed compensation of ₹ 7,83,000/- on account of death of Rajiv.

In brief, the facts are that on 03.12.2010, deceased Rajiv along with one Narender was returning from Rohtak to his native village Dattaur in his auto-rickshaw and was being followed in an Alto car by his brother Sanjay and one Satish. At about 8.00 p.m., when Rajiv reached near Mahendra Factory at National Highway No. 10, a bus bearing registration No. HR-57-1379 came from the opposite direction which was being driven by respondent No. 1 in a rash and negligent manner and struck against the said auto-rickshaw. Due to the impact of the accident, Rajiv as well as Narender sustained multiple and grievous injuries and both were taken to PGI Rohtak by Sanjay-the brother of Rajiv and Satish who were following

them and who witnessed the accident, where Rajiv succumbed to the injuries. On the statement of Sanjay, an FIR No. 475 dated 04.12.2010 was also recorded at Police Station, Sampla, Rohtak.

The claim petition was contested by the respondents, inter-alia, taking preliminary objections that the petition was not maintainable. Upon notice, respondents No. 1 and 2 filed written statements wherein they resisted the claim petition on the grounds of maintainability and suppression of material facts and claimed that the deceased was driving the auto-rickshaw at a very high speed and that the FIR registered against them is false. Insurance Company also resisted the claim on the ground that respondent No. 1 did not possess any legal and valid driving licence on the date of accident and the Company also denied the involvement of the bus in the accident in the alleged manner.

Issues were framed and evidence was led by the parties. The widow of the deceased deposed that besides plying the auto-rickshaw, the deceased was also having other income from his part time job of milkman and was earning ₹ 20000/-

After appreciating the evidence brought on record and the evidence led, the Tribunal held that the accident was the result of rash and negligent driving of Jagdish Chander, the driver of the bus, due to which Rajiv sustained multiple injuries to which injuries he was succumbed . The Tribunal awarded a compensation of ₹7,83,000/- to the claimants/appellants vide its award dated 18.05.2012. The appellants through the present appeal sought to enhance the aforesaid compensation, which they claim to be on the lower side.

I have perused the award passed by the Tribunal and have gone through the paper book.

The factum of the accident is not in dispute since the award of the Tribunal has attained finality. The Tribunal, after examining the evidence produced by the respective parties held that the deceased was 35 years of age and was earning ₹6000/- per month. The Tribunal deducted 1/3rd towards personal expenses of the deceased, which is also correct. The Tribunal while taking the age of the deceased as 35 years rightly applied the multiplier of 16. However, increase in income on account of future prospects at the rate of 40% and other conventional heads on account of loss of consortium and funeral expenses should be required to be reckoned, keeping in view the judgment of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009**. Therefore, the compensation payable to the appellants is re-worked and tabulated as under:-

Sr. No.	Heads of claim	Calculation
1	Name of the deceased	Rajiv
2	Date of accident	03/12/10
3	Age of the deceased	35 years
4	Monthly income of the deceased	6000/- per month
5	40% of (iv) is to be added towards future prospects	(6000+2400)=8400/-
6	1/3 rd of (v) above deducted towards personal expenses	(8400-2800)=5600
7	Compensation calculated after applying the multiplier of 16	5600x16x12=1075200/-
8	Conventional heads	70000/-
9	Total : (7+8+9)	11,45,200/-

As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹11,45,200/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of filing of the appeal in this Court till the date of payment. The claimants will share the amount of compensation as per the award of the Tribunal. The enhanced compensation to be paid as per the liability fixed by the Tribunal itself.

September 25, 2019
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No