

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

F.A.O. No. 1894 of 2014

DATE OF DECISION :- May 15, 2019

The Oriental Insurance Company Limited

...Appellant

Versus

Rajpal and others

...Respondents

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

Present:- Mr. D.P. Gupta, Advocate for the appellant.

Mr. Sourabh Kapoor, Advocate
for Mr. Ashit Malik, Advocate for respondents No. 1 to 3.

On account of death of one Meena, in a motor vehicular accident which took place on 29.12.2010 at about 6.15 P.M., in the area of turning point of Taraori near Ambay Gas godown, while she was travelling in a three-wheeler bearing registration No. HR-45-4590 being driven by Rakesh Kumar alias Chhotu-respndent No. 1 and the three-wheeler was struck by a tractor trolley, legal representatives of deceased namely her husband Rajpal, minor son Master Vishal and minor daughter Baby Komal had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Rakesh Kumar @ Chhotu-driver, Sunny-owner and Oriental Insurance Co. Ltd, Karnal-insurer of three-wheeler in question, claiming compensation.

On notice, only respondent No. 3 has put in appearance to offer a contest whereas respondents No. 1 and 2 did not appear despite service and

were proceeded against ex-parte.

Vide Award dated 15.1.2014, the Motor Accident Claims Tribunal, Karnal awarded compensation of Rs.5,73,800/- with interest at the rate of 7.5% per annum from the date of filing of the petition till realization. The amount was apportioned among the claimants as per details given in the Award. Respondents No. 1 and 2 was held to be liable to pay the compensation. Respondent No. 3 Insurance Company was directed to satisfy the award and then recover the amount so paid from driver and owner of the vehicle.

Feeling aggrieved by the Award, respondent No. 3-Insurance Company has filed appeal before this Court, notice of which was given to claimants-respondents No. 1 to 3, who put in appearance through their counsel.

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

The Tribunal, while taking the age of the deceased to be 30 years had assessed her monthly income working as a labourer to be Rs.3300/- and by making deduction of 1/3rd towards personal expenses the dependency of the claimants was found to be Rs.2200/- (3300 x 2/3). The annual dependency was worked out to Rs.26,400/- (2200 x 12). Keeping in view the age of the deceased, the Tribunal had rightly adopted multiplier of 17, therefore, the total compensation payable was arrived at Rs.4,48,800/- (2200 x 12 x 17).

However, the Tribunal fell in error in awarding sum of Rs.25,000/- on account of funeral expenses and Rs. 1 lac to minor claimants i.e. respondents No. 2 and 3 on account of loss of care and guidance. As per structured formula and clarified in the 2nd schedule under Section 163A of the Motor Vehicles Act, funeral expenses can be paid upto Rs.2000/- and there is

no Head for awarding compensation on account of loss of care and guidance. Though for beneficiary spouses on account of loss of consortium a sum of Rs.5,000/- is payable and for loss of estate another sum of Rs.25,00/- can be awarded. In that way the claimants are entitled to get compensation of Rs.4,58,300/- and Tribunal has wrongly awarded a sum of Rs.5,73,800/-. Therefore, the appeal is accepted partly, the Award passed by the tribunal is modified and compensation of Rs.4,58,300/- is granted to the claimants payable by respondents No. 1 to 3 jointly and severally with interest at the rate of 7.5% per annum from the date of filing of the appeal till actual realization along with cost of the appeal. The other terms and conditions with regard to apportionment and right of recovery granted to the appellant Insurance Company shall remain the same except that the amount payable to the claimants would be reduced proportionately.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

May 15, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No