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

FAO-1455-2015(O&M)
Date of decision:-26.8.2019

Reliance General Insurance Company Ltd.

...Appellant

Versus

Smt.Bhateri Devi and others

...Respondents

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

Present: Mr.Subhash Goyal, Advocate
for the appellant.

Mr.S.K. Yadav, Advocate
for respondents No.1 to 8.

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**H.S. MADAAN, J.**

On account of death of Sh.Sahi Ram son of Sohan Lal in a road mishap, which took place on 30.10.2012 in the area of village Kharoli arising out of use of tractor bearing registration No.RJ-18/RA-6061, his legal representatives, namely, his widow – Smt.Bhateri Devi, daughter – Miss Priyanka, minor daughters - Ms.Samita and Ms.Sarita; minor sons - Master Gilesh and Master Satish; father – Sh.Sohan Lal and mother – Smt.Anari Devi had brought a claim petition under Section 163-A of the Motor Vehicles Act, 1988 against respondents i.e. Shish Ram – registered owner and Reliance General Insurance Company Ltd. - insurer of the tractor bearing registration No.RJ-18/RA-6061, claiming compensation to the tune of Rs.20 lakhs along with interest.

On getting notice, both the respondents had put in appearance and offered a contest.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, vide Award dated 4.9.2014, learned Motor Accidents Claims Tribunal, Narnaul allowed the claim petition partly and awarded compensation of Rs.6,84,600/- to the claimants along with interest @ 9% per annum from the date of filing of the petition till realization of the amount, payable by both the respondents jointly and severally. The manner in which the compensation was to be apportioned was also given in the award.

Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

Notice of the appeal was issued to the respondents and respondents No.1 to 8 have put in appearance through counsel.

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

While assessing the compensation, the Tribunal has taken the age of deceased to be 40 years, his monthly income to be Rs.3,300/ per month. The Tribunal has deducted $1/10^{th}$ of income of deceased towards his personal and living expenses in view of ratio of authority ***New India Assurance Company Ltd. Versus Gopali and others 2012(3) RCR(Civil) 818 S.C.*** That judgment is not applicable since that related to a claim petition under Section 166 of the Motor Vehicles Act and not under

Section 163-A of the Motor Vehicles Act. The Tribunal fell in error in doing so since in terms of Section 163-A of the Motor Vehicles Act, the compensation is to be assessed as per structured formula, which provides that 1/3rd of the amount is to be deducted in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. Doing that the monthly dependency of the claimants comes to be Rs.2,200/- and annual dependency to be Rs.26,400/-. The Tribunal has used multiplier of 15, which is as per schedule. Therefore, the compensation payable comes out to Rs.3,96,000/-(26400 x 15).

The Tribunal again fell in error in awarding Rs.20,000/- on account of transportation and last rites of the deceased, Rs.30,000/- towards love and affection and Rs.1 lakh to petitioner No.1 – Smt.Bhateri Devi, widow of deceased on account of loss of consortium, when as per the second schedule, the claimants were entitled to Rs.2,000/- as funeral expenses, widow to get Rs.5,000/- on account of loss of consortium and Rs.2,500/- under the head loss of estate.

Doing that, the total compensation payable comes out to Rs.4,05,500/-(396000 + 2000 + 5000 + 2500).

Learned counsel for the respondents has contended that as per the Gazette Notification issued by Ministry of Road Transport and Highways dated 22.5.2018, it has been directed that in case of fatal accident, compensation payable in case of death shall be Rs.5 lakhs.

Whereas, learned counsel for the insurance company has argued that the Notification has got prospective effect and not retrospective effect.

Since in the present case, the accident had taken place prior to issuance of notification i.e. on 31.10.2012, the compensation is to be calculated as per the structured formula.

The Tribunal has wrongly awarded compensation of Rs.6,84,600/-. The same is reduced to Rs.4,05,500/-. The interest granted @ 9% per annum is also on the higher side. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.4,05,500/-. Other terms and conditions in the original award shall remain the same. The share of the claimants shall be reduced proportionately. Amount if paid in excess be refunded by the claimants to the appellant – insurance company at the earliest.

With such modification, the appeal is allowed partly with costs.

26.8.2019 **(H.S.MADAAN)**
Brij **JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**