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

241 **Date of decision: 22.01.2019**

**FAO-1342-2016 (O&M)**

National Insurance Company Ltd. ... Appellant

Versus

Sundri @ Sunehri and others ... Respondents

**FAO-1618-2016 (O&M)**

Sundri @ Sunehri and others ... Appellants

Versus

Om Parkash and others ... Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate for the insurance company.
Mr. Kuldeep Khandelwal, Advocate for
Mr. Pankaj Mehta, Advocate for the claimants.
Mr. Sant Lal Barwala, Advocate for the driver and owner.

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**REKHA MITTAL, J. (Oral)**

This order will dispose of FAO Nos.1342 and 1618 of 2016 as these have emerged out of the same award dated 07.10.2015 passed by the Motor Accidents Claims Tribunal, Hisar whereby compensation has been assessed on account of death of Krishan Kumar in a motor vehicular accident that took place on 01.09.2014.

FAO No.1342 of 2016 has been filed by the National Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would fairly inform that the appeal has been preferred to challenge quantum of compensation assessed by the Tribunal.

The Tribunal has awarded compensation of Rs.16,90,945/-, detailed hereunder:-

| | |
|---|---|
| 1. Monthly income of the deceased | Rs.14,555/- |
| 2. Multiplier | 11 |
| 3. Deduction for personal expenses | 1/4$^{th}$ |

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| | |
|---|---|
| 4. Loss of dependency | Rs.14,40,945/- |
| 5. Loss of consortium to the widow and loss of estate | Rs.1,00,000/- |
| 6. Loss of love and affection for minor children | Rs.1,00,000/- |
| 7. Funeral and transportation expenses | Rs.25,000/- |
| 8. Cost of litigation | Rs.25,000/- |

Counsel for the insurance company would argue that as the deceased was working as Beldar with State of Haryana, financial assistance available to family of the deceased under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006') is liable to be deducted in view of judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569.**

Counsel for the claimants, on the contrary, would urge that only 50% of the amount available under the Rules of 2006 is liable to be deducted in view of judgment of this Court **New India Assurance Co. Ltd. Vs. Ajmero and others, FAO No.2648 of 2016, decided on 31.07.2017**. He would further argue that gross salary of the deceased was Rs.26,360/- but the Tribunal has wrongly taken into consideration his carry home salary of Rs.14,555/- per month for computing loss of dependency. Claimants are entitle to addition in income for future prospects @ 15%.

Ram Kumar, Assistant, Public Health Department, Hansi PW3 was examined to prove salary of deceased Krishan Kumar and he produced salary certificate Ex.P1 wherein it is mentioned that gross salary was Rs.26,360/- and after deducting a sum of Rs.11,805/- towards GPF subs, GPF advance and certain other advances, net pay is Rs.14,555/-. The deductions made from salary of the deceased are to be ignored for computing loss of dependency and the entire salary of Rs.26,360/- per month shall be taken into account for the purpose. The annual income comes to Rs.3,16,320/-.After deducting income tax Rs.6632/-, the net annual income is Rs.3,09,688/-. The deceased was 52 years old at the time of occurrence. Claimants shall be entitle to addition in income for future prospects @ 15%. The Tribunal has rightly applied multiplier of 11 and deduction for personal and living expenses to the extent of $1/4^{th}$. In this manner, loss of dependency is calculated at Rs.29,38,164/- [(3,09,688 x 11) + (15% future prospects) – ($1/4^{th}$ deduction for personal expenses)].

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Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, detailed hereunder:-

| | |
|---|---|
| 1. Loss of consortium | Rs.40,000/- |
| 2. Loss of estate | Rs.15,000/- |
| 3. Funeral expenses | Rs.15,000/- |

Plea raised by counsel for the claimants for allowing benefit of judgment of Two Judge Bench of Hon'ble the Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333** is not tenable when examined in the light of judgments of Constitution Bench in **Pranay Sethi and others's case (supra)** and Three Judge Bench in **Sebastiani Lakra and others's case (supra)**.

In view of the above, total compensation is Rs.30,08,164/-.

This brings the Court to financial assistance available under the Rules of 2006. Ram Kumar PW3 in his cross examination has stated that as per Haryana Government Rules, wife of the deceased namely Sundri is getting monthly salary of Rs.23,684/-. Clause (c) of Rule 5 of the Rules of 2006 provides that family of the employees would continue to receive financial assistance equal to the pay and other allowances that was last drawn by the deceased employee in the normal course for a period of seven years or till the date the employee would have retired from permanent service on attaining age of superannuation whichever is less, if the employee had attained the age of 48 years. Krishan Kumar died on 01.09.2014 and his date of retirement on superannuation is 31.07.2022 which is more than seven years prescribed in Clause (c) of the aforesaid rules. Payment of financial assistance @ Rs.23,684/- per month for a period of seven years comes to Rs.19,89,456/- and 50% thereof, Rs.9,94,728/- shall be deducted from compensation calculated by this Court. Accordingly, the claimants are entitle to compensation to the tune of Rs.20,13,436/- (30,08,164 - 9,94,728). As such, additional amount of Rs.3,22,491/- (20,13,436 – 16,90,945) shall be payable with interest @ 7.5% per annum

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from the date of petition till realization, in terms of award passed by the Tribunal.

Disposed of accordingly.

22.01.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No

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