

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

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Date of decision: 15.03.2019

FAO 2295 of 2016 (O&M)

Cholamandalam MS General Insurance Co Ltd*Appellant*

Versus

Sheela Devi and others*Respondents*

FAO 2381 of 2016 (O&M)

Sheela Devi and others*Appellants*

Versus

Malkiat Singh and others*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Ms Vandana Malhotra, Advocate
for the insurance company
Mr. Nonish Kumar, Advocate
for the claimants

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 16.12.2015 passed by the Motor Accidents Claims Tribunal, Karnal (in short, 'the Tribunal') whereby compensation has been assessed on account of death of Sunil Kumar in a motor vehicular accident that took place on 04.04.2014.

FAO No.2295 of 2016 has been filed by the Cholamandalam MS General 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 inform that the appeal has been preferred only to assail quantum of compensation assessed by the Tribunal.

The Tribunal has awarded Rs.29,84,052/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.8100/-
2. Addition in income for future prospects	50%
3. Multiplier	17
4. Deduction for personal expenses	1/4 th
5. Loss of dependency	Rs.18,59,052/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of estate	Rs.1,00,000/-
8. Loss of consortium	Rs.1,00,000/-
9. Loss of love and affection	Rs.9,00,000/-

Counsel for the insurance company would argue that the Tribunal has assessed income of the deceased on the basis of Deputy Commissioner rates' meant for payment of wages out of contingency fund. It is further argued that minimum wage fixed by the State of Haryana at the relevant time was far below than income assessed by the Tribunal. The Tribunal has allowed addition for future prospects @ 50% as against 40% in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. Compensation allowed under conventional heads needs to be restricted to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court in **Pranay Sethi's case (supra)** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**.

Counsel appearing on behalf of claimants argue that compensation allowed by the Tribunal may be kept intact as the deceased left behind his widow, three minor children and old aged parents.

The Tribunal has noticed in para 19 of the award that Smt.

Sheela Devi, widow of the deceased appeared in the witness box and deposed that Sunil Kumar was working as auto mechanic and also running a shop in the name and style of Sunil Auto Center and he used to do the business of sale and purchase of vehicles and thereby earning Rs.20,000/- per month. The claimants examined Sandeep Kumar son of Megh Raj who had stated that he had been working with deceased Sunil Kumar and he was an expert auto mechanic and running an auto repair shop in the name of Sunil Auto Center, Karnal. He tendered the document Exs.PW2/B and PW2/C.

However, it has been noticed by the Tribunal that there is no documentary evidence with regard to income of the deceased. Counsel for the claimants has failed to apprise the Court if documents Ex. PW2/B and PW2/C, pertain to ownership or possession of shop by the deceased in which any such business under the name of Sunil Auto Centre was carried on. Taking a view from the testimony of Sheela Devi supported by Sandeep Kumar, it can be held that the deceased was Auto Mechanic, therefore, a skilled worker. Taking into consideration the minimum wage of skilled worker available at the relevant time in State of Haryana, income of the deceased is assessed at Rs.6,000/-. The claimants shall be entitle to addition in income for future prospects at the rate of 40%. The Tribunal has rightly applied multiplier of 17 and deduction for personal expenses to the extent of 1/4th. As such, loss of dependency is calculated at Rs.12,85,200/- (Rs.12,24,000/- i.e. 6,000 x 12 x 17 + Rs.4,89,600/- (40% addition) – Rs.4,28,400/- (1/4th deduction)).

Under conventional heads, claimants shall be entitle to

Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of aforesaid judgments of Hon'ble the Supreme Court.

Total compensation is Rs.13,55,200/- and compensation allowed by the Tribunal is reduced to the extent of Rs.16,28,852/- (29,84,052/-- 13,55,200/-). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeals are disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

15.03.2019
Ashok/Mohan Bimbura

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