

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 5764 of 2013 (O&M)
Date of decision: 30.10.2019

National Insurance Co. Ltd.

...Appellant

V/s.

Dayawanti and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Ravinder Arora, Advocate for the appellant.

Mr. B.D. Sharma, Advocate for
respondents No. 1 to 6.

RITU BAHRI, J. (Oral).

The insurance company has come up in appeal against the award of the tribunal dated 23.07.2013 whereby the claimants have been awarded compensation of Rs.11,34,496/- on account of death of Yash Paul who died in a road accident which took place on 23.07.2011.

Brief facts of the case are that on 23.07.2011 at 9:30 p.m., Yash Paul alongwith his wife Dayawanti was coming from Gandhi Camp after meeting their relatives and going to his house at Sital Nagar. When they reached near Punjab National Bank, near DAV College Campus, one motorcycle bearing No. PB-08-BK-6074 driven by respondent No. 1 hit Yash Paul very badly, in a rash and negligent manner and without blowing any horn due to which the said Yash Paul fell down on road and sustaines grievous injuries. With the help of public, he was brought to Sacred Heart Hospital, Maqsudan on an auto rikshaw from where he was referred to Civil Hospital Jalandhar due to his critical condition. He was taken to Civil

Hopsital Jalandhar but was declared dead. Consequently, the claimants/respondents No. 1 to 6 filed a claim petition before the tribunal.

The parties are not in dispute with respect to finding on issue No. 1 that the accident took place on account of rash and negligent driving of respondent No. 1.

The deceased was 58 years of age as per the documentary evidence. The tribunal had assessed compensation as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	22,907/-p.m.
(ii)	1/4 th deducted as personal expenses of the deceased	22,907-5,726=17181
(iii)	Annual dependency	17181X12=2,06,172
(iv)	Compensation after multiplier of 2 is applied during his service period i.e. 2 years	2,06,272X2=4,12,544 (the tribunal had wrongly calculated as Rs.4,12,544/-, however it should have been Rs.4,12,344/-)
(v)	Compensation after the age of superannuation (i.e. half of total salary) while applying multiplier of 7	Rs.2,06,172/2X7=7,21,952(the tribunal had wrongly calculated as Rs.7,21,952/-, however it should have been Rs.7,21,602/-
	Addition of column No. (iv) and (v)	4,12,544+7,21,952=Rs.11,34,496/-
	TOTAL COMPENSATION AWARDED	Rs.11,34,496/-

The claimants were found entitled to total compensation of Rs.11,34,496/- along with interest @ 6% per annum from the date of filing of the petition till realization.

The insurance company is challenging the award on the quantum of compensation. Learned counsel for the insurance company has argued that except the widow all the other claimants are major and hence cut of ½ be applied.

However keeping in view the judgment of Hon'ble the Supreme Court passed in *Monford Brothers of St. Gabriel and another V/s. United India Insurance and another* 2014 ACJ 667, the compensation has to be assessed taking into account the number of legal heirs and in that

background, cut has to be imposed. In the present case, cut of 1/4th has been rightly applied.

Hence, appeal filed by the insurance company is dismissed. Stay application also stands dismissed.

CM-21806-CII-2014

Application for placing on record cross objections is allowed and the cross objections are taken on record.

Cross-objection No. 190-CII-2014

The claimants/respondents No. 1 to 6 have filed cross objections for enhancement of compensation.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account.

The deceased was 58 years of age and his monthly income was Rs. 22,907/- at the time of his death.

Hence, to meet the ends of justice, the compensation is hereby reassessed keeping in view the judgments passed by Hon'ble the Supreme Court in *Magma General Insurance Company Ltd. V/s. Nanu Ram Alias Chuhru Ram and others*, Civil Appeal No. 9581 of 2018 and *National Insurance Company Limited Vs. Pranay Sethi and others*, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.22,907/-p.m.
(ii)	15% increase as future prospects	22,907+3,436=Rs.26,343/-
(iii)	1/4 th deduction for personal expenses	26,343-6,586=Rs.19,757/-

(iv)	Total loss of dependency after applying multiplier of 9	19,757X12X9=21,33,756/-
(v)	Funeral expenses	Rs.15,000/-
(vi)	Loss of estate	Rs.15,000/-
(vii)	Loss of filial consortium	Rs.2,40,000/- (Rs.40,000/- each to all the six claimants)
	TOTAL COMPENSATION AWARDED	Rs.24,03,756/-
	ENHANCED AMOUNT OF COMPENSATION	24,03,756- 11,34,496=Rs.12,69,260/-

The enhanced amount of compensation of **Rs.12,69,260/-** shall be paid within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of *Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others*, Civil Appeal No. 4528 of 2019. Remaining conditions of disbursal shall remain same.

Accordingly, the award stands modified to the above extent and the cross objection is allowed.

(RITU BAHRI)
JUDGE

30.10.2019
Divyanshi

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