

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

XOBJC-221-CII of 2016 (O&M) in/and
FAO No.3074 of 2016 (O&M)
Date of decision: 22.01.2019

ORIENTAL INSURANCE CO LTD ... Appellant

Versus

HARDEEP KAUR AND OTHERS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Raj K. Bashabmoo, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for the claimants/cross objectors.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.3074 of 2016 and cross objections No.221-CII of 2016 as these have emerged out of the same award dated 17.02.2016 passed by the Motor Accidents Claims Tribunal, Rupnagar whereby compensation has been assessed on account of death of Nikka Singh in a motor vehicular accident that took place on the intervening night of 20/21.07.2014.

FAO No.3074 of 2016 has been filed by the Oriental Insurance Company Ltd. (hereinafter to be referred as 'the insurance company') and the cross objections have been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company has assailed findings of the

Tribunal on issue No.1 whereby rashness and negligence has been attributed to truck No.HP-12D-7599 driven by Suresh Kumar respondent No.4. It is argued that as per story brought forth by the claimants, occurrence in question took place after mid night when Nikka Singh along with other police officials including ASI Mohan Lal PW5 was on duty at T-point Malikpur for checking the vehicles and had laid a barricade. It is argued that FIR was lodged at the behest of ASI Mohan Lal but in the FIR, neither complete registration particulars of the offending vehicle nor name of the driver has been mentioned. It is further argued that the claimants examined Jawahar Singh PW4 but the said witness has been introduced later. According to counsel, Jawahar Singh in his cross examination has stated that he recorded his statement to the police at the spot and had it been true, FIR would have been lodged at the statement of Jawahar Singh PW4 instead of statement of ASI Mohan Lal PW5.

Counsel representing the claimants has supported findings of the Tribunal on issue No.1 holding Suresh Kumar, driver of offending vehicle responsible for the occurrence due to his rash and negligent driving as he ignored the signal given by the police officials to stop the vehicle and in the process caused injuries to Head Constable Nikka Singh that proved fatal. It is further argued that on due investigation of FIR lodged at the behest of ASI Mohan Lal, Suresh Kumar was put to trial on the basis of report submitted under Section 173 Cr.P.C. Suresh Kumar did not appear in the witness box to counter case of the claimants and testimonies of Jawahar

Singh PW4 and ASI Mohan Lal PW5, therefore, an adverse inference is liable to be drawn against respondents before the Tribunal.

To substantiate his claim for enhancement of compensation, it is argued that claimants are entitle to addition in income for future prospects @ 15% as the deceased was less than 58 years of age and a regular employee of the State of Punjab. It is further argued that the Tribunal has wrongly applied split multiplier and findings of the Tribunal in this regard cannot be allowed to sustain in the light of judgment of this Court **Jasmel Kaur and another Vs. Sukhraj Singh and others, FAO No.4858 of 2012 and other connected case, decided on 07.02.2018**. He would further pray that in view of age of the deceased in the bracket of 56 to 60 years, appropriate multiplier of 9 may be applied.

Counsel representing the insurance company, in reply, has supported the award in respect of applying split multiplier as the deceased was due to retire after six months of the occurrence.

I have heard counsel for the parties, perused the paper book and records.

ASI Mohan Lal is the author of FIR wherein he has given incomplete particulars of the offending truck stating it to be '7599' but the initial particulars 'HP-12-D' are not there in the FIR. The occurrence in question took place at 12.40 am when the police party had laid a naka at T-point Malikpur. It is plea of the claimants that HC Nikka Singh gave a signal with light of torch to stop the vehicle but the truck driver not only

refused to response to the signal but also struck against barricade and after breaking the barricade ran over Nikka Singh. The manner in which the occurrence had suddenly taken place resulting in serious injuries to Nikka Singh, it cannot be expected from other police officials present at the spot to note the complete registration number of the vehicle.

There is no denial that on due investigation of FIR registered at the behest of ASI Mohan Lal, challan was presented in the Court and Suresh Kumar was put to trial. Both the witnesses namely Jawahar Singh PW4 and ASI Mohan Lal PW5 examined by the claimants to prove the occurrence were examined in the criminal case. This apart, driver of the offending vehicle did not appear in the witness box to counter case of the claimants and testimonies of the witnesses, therefore, an adverse inference is liable to be drawn against the respondents (therein) for non examination of driver without any tangible explanation. Even otherwise, there is nothing on record suggestive of the fact that ASI Mohan Lal had any animosity against Suresh Kumar or owner of the truck in order to get the offending vehicle falsely implicated in the civil and criminal proceedings. Analyzed from any angle, I find it difficult to subscribe to contention of counsel for the insurance company that findings of the Tribunal on issue No.1 suffer from an error much less perversity warranting intervention. That being so, findings of the Tribunal on issue No.1 are affirmed.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal assessed monthly loss of dependency at

Rs.51,111/- and annual income to the tune of Rs.6,13,332/-. The deceased was Head Constable and drawing salary of Rs.41,587/- per month. The Tribunal has also taken into consideration Rs.9524/- per month, pension drawn by the deceased. Counsel for the claimants has not disputed that pension drawn by the deceased would be available to his widow. When the case is examined in the light of judgment of this Court **Charanjit Singh Vs. Harish Kumar Sachdeva and others, FAO No.10228 of 2014 along with connected cases, decided on 30.01.2018**, the benefit of pension cannot be extended to the claimants. After excluding the amount of pension, annual income of the deceased is Rs.4,99,044/-. After deducting income tax (Rs.24,904/-), net annual income of the deceased is Rs.4,74,140/-.

The claimants shall be entitle to addition in income for future prospects @ 15% as the deceased was less than 60 years of age. The Tribunal has rightly applied cut of 1/3rd for personal and living expenses of the deceased.

The Tribunal has applied a split multiplier in view of the fact that the deceased was due to retire seven months after the occurrence on 31.03.2015. When the case is examined in the light of judgment of this Court **Jasmel Kaur and another's case (supra)**, split multiplier applied by the Tribunal cannot be allowed to sustain. However, as the deceased was less than 60 years of age, admissible multiplier is 9. In this manner, loss of dependency is calculated at Rs.32,71,566/- [(4,74,140 x 9) + (15% future

prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, the Tribunal has awarded a sum of Rs.1,20,000/- namely Rs.1 lakh for loss of consortium and Rs.20,000/- for funeral expenses. In the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, the same is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

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

Total compensation is Rs.33,41,566/- and the additional amount is Rs.14,45,408/- (33,41,566 – 18,96,158), payable with interest @ 7.5% per annum from the date of petition till realization, to widow of the deceased.

The appeal is disposed of and the cross objections are partly allowed in the aforesaid terms.

(REKHA MITTAL)
JUDGE

22.01.2019
ashok

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