

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

FAO 5871 of 2014 (O&M)

Date of decision: 6.2.2019

United India Insurance Co. Ltd.

...Appellant

Versus

Channa Kaur and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.C. Gupta, Advocate,
for the appellant.

None for the respondents.

JAISHREE THAKUR, J.

The appellant seeks to assail the award dated 2.5.2014 passed by the Motor Accident Claims Tribunal on a claim petition filed under Section 166 of the Motor Vehicle Act, 1988, whereby respondents No.1 to 4 have been awarded compensation of ₹16,54,000/- on account of the death of Amarjit Singh.

In brief, the facts are that in an accident that took place on 19.8.2006, Amarjit Singh, who was 40 years, died. Therefore, the claimants filed a claim petition stating that the deceased was working as a driver with Sunder Transport, TATA Nagar, Jamshedpur and was earning ₹8,000/- per month. The Tribunal held that it was on account of rash and negligent driving of Harpreet Singh—driver of the offending vehicle that caused death of Amarjit Singh and taking the salary of the deceased at ₹8,000/-, as

pleaded by the claimants and other conventional heads awarded compensation of ₹16,54,000/-, against which the instant appeal has been filed.

Notice of motion was issued to respondents 1 to 4. However, since all the efforts to serve the respondents by way of normal course failed, therefore, they were served by way of publication. Even today none has appeared on behalf of the respondents. Under the circumstances, this Court is left with no option, but proceed to decide the case in the absence of the respondents.

Learned counsel for the appellant, inter-alia, contends that the Tribunal has taken the income of the deceased to be ₹8,000/- per month on the premise that the deceased was a driver. It is submitted that a specific stand was taken by the appellant in the written statement that the deceased was not working as a driver and drawing the salary as claimed by the claimants, as no driving licence was produced on record, still the Tribunal did not deal with the plea taken by appellant. Therefore, the award of compensation granted by the Tribunal is liable to be set aside.

Records was called for.

I have heard learned counsel for the appellant and perused the record.

Before dealing with the contentions as raised by the learned counsel for the appellant, it would be would appropriate to re-produce para 22 of the written statement filed by the appellant, wherein the appellant made the following averments:-

“That Para No. 22 of the claim petition is incorrect and denied.

The claimant has not suffered any disability. It is denied that the claimant was working as driver and earning Rs. 8000/-. No driving licence of the deceased or his salary certificate of income proof has been brought record hence emphatically denied and they are put to strict proof thereof.”

From the pleadings of the parties, it is apparent that the appellant had taken a definite stand that the deceased was not working as a driver. However, a perusal of the impugned award would show that the plea taken by the appellant has not been dealt with at all. Therefore, in the absence of documentary evidence that the deceased was a driver, his salary could not have been taken at ₹8,000/-, particularly when no salary certificate from the employer, where the deceased was allegedly working was brought on the record. Under the circumstances, this Court is left with no choice but to apply some guess work and work out the compensation payable to the claimants/respondents. The Motor Vehicle Act is a beneficial legislation aimed at providing relief to the victims or their families in case of genuine claims. The occurrence in this case took place in the year 2006 and keeping in view the fact that the deceased aged 40 years had a large family to support, his income is taken at ₹4,000/-, even though counsel for the appellant would urge that the minimum wages for driver in 2006 was ₹3,500/-. However, increase in income on account of future prospects at the rate of 40% is required to be reckoned, keeping in view the judgment of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009**. In so far as the compensation awarded under the other conventional heads, namely, loss of consortium, loss of care and guidance to minor children, loss to estate and

funeral expenses are concerned, the same is maintained, as granted by the Tribunal, as per the law laid down at relevant time. Therefore, compensation payable to the claimants are re-worked and tabulated as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Amarjit Singh
(ii)	Date of accident	19.8.2006
(iii)	Age of the deceased	40 years
(iv)	Monthly income of the deceased	₹ 4000/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 4000+₹ 1600)= ₹ 5600/- per month
(vi)	1/4 th of (v) above deducted towards personal expenses	(₹ 5600- ₹ 1400) = ₹ 4200/- per month
(vii)	Compensation calculated after applying the multiplier of 15	(₹4200X12X15) = ₹ 7,56,000
(viii)	Compensation for loss of consortium	₹ 1,00,000
(ix)	Loss of care and guidance to minor children	₹ 1,00,000
(x)	Compensation for loss of estate	₹ 25000
(xi)	Funeral expenses	₹ 25000
<i>Total</i>		₹10,06,000

As a sequel of my discussion above, the main appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 10,06,000/- (₹ Ten Lacs and Six Thousand only). The claimants will share the amount of compensation as per the award of the Tribunal.

6.2.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No