

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

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FAO-3310-2016 (O&M)

Date of decision: 08.05.2019

NATIONAL INSURANCE COMPANY LTD.

... Appellant

Versus

PARAMJIT KAUR AND ORS.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Amrinder S. Sidhu, Advocate for the appellant.
None for respondents No.1 to 4.
Mr. Sandeep Saini, Advocate for
Mr. Puneet Sharma, Advocate for respondents No.5 and 6.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 12.05.2015 passed by the Motor Accidents Claims Tribunal, Amritsar whereby compensation has been assessed on account of death of Manjinder Singh in a motor vehicular accident that took place on 20.06.2013.

Counsel for the appellant-insurance company has assailed the award primarily on two counts. The first submission made by counsel is that the present is a case of composite negligence of two vehicles involved in the occurrence and even contributory negligence is liable to be attributed to the deceased and as such, the insurance company is not liable to pay compensation to the extent of negligence attributable to Indica car bearing No.DL-8CM-5816 and Manjinder Singh (since deceased). To bring home his contention with regard to deceased also being liable for the occurrence, it is argued that it is the case of claimants themselves that deceased was a pillion rider on motorcycle bearing No.PB02-BM-5018 and he was holding a gas cylinder at the time of occurrence. It is alleged by them that a person sitting on the rear seat of Indica car aforesaid opened the door and motorcycle driven by Jugraj Singh got entangled and the offending truck hit the deceased from behind while he was lying on the road.

He has challenged quantum of compensation with regard to addition in income for future prospects and compensation under conventional heads.

There is no representation on behalf of respondents No.1 to 4,

earlier being represented by a counsel.

Counsel representing respondents No.5 and 6 has supported the award.

The motorcycle driven by Jugraj Singh on which the deceased was travelling as a pillion rider was hit with door of Indica car as an occupant of the said car opened the door of stationary vehicle without ensuring that there is no vehicle coming from behind. There is nothing on record suggestive of the fact that accident in question took place because of deceased holding a gas cylinder in his hand. That being so, contention of the insurance company to attribute contributory negligence to the deceased is not meritorious and accordingly rejected.

So far as plea with regard to composite negligence of two vehicles, driver, owner and insurer, if any, of Indica car had not been impleaded as a party. There cannot be dispute about settled position in law that claimants are at liberty in law to claim compensation from either of the joint tort-feasors. At the same time, liability of driver, owner and insurer, if any, of Indica car cannot be ascertained in absence of their being impleaded as a party. As such, the insurance company of truck cannot escape liability to pay compensation.

This brings the Court to quantum of compensation assessed by the Tribunal.

The Tribunal awarded Rs.12,07,800/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6000/-
2. Addition in income for future prospects	30%
3. Multiplier	14
4. Deduction for personal expenses	1/4 th
5. Loss of dependency	Rs.9,82,800/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of estate	Rs.1,00,000/-
8. Loss of consortium	Rs.1,00,000/-

The Tribunal has assessed income of the deceased at Rs.6000/- per month by treating him as a casual labour and the same is affirmed when examined in the light of notification issued by the State of Punjab fixing minimum wage at the relevant time. The addition in income for future prospects would be 25% as the deceased was more than 40 years of age. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at

Rs.9,45,000/-[(6000 x 12 x 14) + (25% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal 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.10,15,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs.1,92,800/- (12,07,800 - 10,15,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

08.05.2019

ashok

Whether speaking/reasoned:
Whether reportable:

(REKHA MITTAL)
JUDGE

Yes / No
Yes / No