

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

F.A.O. No. 3445 of 2016

DATE OF DECISION :- November 14, 2019

Kitabo and another

...Appellants

Versus

Mahender Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Robin Singh Hooda, Advocate for the appellants.

Ms. Sheenu Sura, Advocate for respondent No. 3.

Briefly stated the facts of the case are that on account of death of Joginder Singh, in a motor vehicular accident which took place on 8.1.2014 at about 10.00 A.M., on Jhajjar Sampla Road in the area of village Jondhi Tehsil and District Jhajjar, statedly on account of rash and negligent driving of Truck bearing registration No. HR-63-B-9204 by respondent No. 1 Mahender Singh, legal representatives of deceased namely his mother Smt.Kitabo and minor brother Parkash had brought a claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 against respondents i.e. Mahender Singh-driver, Akshay Kumar-owner and M/s Magma General Insurance Co. Ltd, New Delhi-insurer of Truck bearing registration No. HR-63-B-9204 (hereinafter referred to as the offending Truck).

On notice, all the three respondents appeared and filed written statements contesting the claim petition. Issues on merits were framed.

On conclusion of trial, the Motor Accidents Claims Tribunal, Sonapat vide award dated 29.10.2015 granted compensation of Rs.11,66,552/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till actual realization payable by respondent No. 3. Out of the compensation amount a sum of Rs.6,66,552/- were ordered to be given to claimant No. 1 Smt. Kitabo in cash whereas amount of Rs.5,00,000/- was ordered to be deposited in her name in the form of FDR with some nationalized bank for a period of three years. The claim petition qua claimant No. 2 was dismissed.

Feeling aggrieved with the amount of compensation awarded by the Tribunal, the claimants have approached this Court by way of filing an appeal, notice of which was given to the Insurance Company.

I have heard learned counsel for the parties besides going through the record.

The Tribunal has taken the age of the deceased to be 22 years keeping in view the age so entered in his post mortem report Ex.P2. Though according to the claimants he was working as a driver earning Rs.15,000/- per month but due to lack of evidence that contention was not accepted and his monthly salary was taken to be Rs.6430/- as per minimum wages for the year 2013-2014 prevalent in the State of Haryana.. Though learned counsel for the appellants has contended that it has been so done wrongly but since the claimants could not produce any documentary evidence to show that the deceased was earning Rs.15,000/- per month from avocation of driver no

fault can be found with approach of the Tribunal in taking monthly income of the deceased to be Rs.6430/- in light of the minimum wages prevailing during the relevant time. The Tribunal has added 50% of the amount towards future prospects. In terms of judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' where age of the deceased was below 40 years an addition of 40% of the established income is to be made towards future prospects. Similarly the Tribunal has awarded a sum of Rs.1 lac towards love and affection and Rs.25,000/- as funeral expenses which in view of ratio of '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' only a sum of Rs.15,000/- as funeral expenses and Rs.15,000/- towards loss of estate could have been awarded. The Tribunal has been quite liberal with the claimants in awarding compensation. There is absolutely no reason to enhance the compensation rather there is a scope to reduce the same. However, since the Insurance Company has neither filed appeal nor cross objections, the compensation amount awarded is not being reduced and is kept as such.

No ground is made out to enhance the compensation. There is no merit in the appeal, therefore, the same stands dismissed.

(H.S. MADAAN)
JUDGE

November 14, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No