

FAO No.4826 of 2016 (O&M)
Date of decision : November 06, 2019

Versus

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

Mr. Suvir Dewan, Advocate
for respondent No.3-Insurance Company.

CM-16569-CII-2016

Application stands allowed.

Briefly stated facts of the case are that on account of death of Sukhwinder Singh alias Sukha, aged about 26 years, a mason by avocation in a road side accident, which took place on 12.08.2014 at about 5.30 a.m. in the area of Police Station Shahpur, District Jalandhar stated to be on account of rash and negligent driving of tractor trolley bearing registration No.PB-08-BK-4474 (hereinafter referred as 'the offending vehicle') by respondent No.1 Sandeep Singh. Legal representatives of such deceased, namely, his wife Veero alias Veer Kaur, aged about 24 years, minor daughter Pooja, aged about four years and mother Satia Kaur alias Satya, aged about 46 years had brought a claim petition under Section 166 of the

Motor Vehicles Act, 1988 against respondents Sandeep Singh, driver, Amarjit Singh, owner and National Insurance Company, Jalandhar insurer of the offending vehicle claiming compensation.

On being put to notice, all the three respondents appeared and filed written statements, contesting the claim petition. On conclusion of trial, the Motor Accidents Claims Tribunal, Jalandhar (hereinafter referred as 'the Tribunal') vide Award dated 07.08.2015 found it to be a case of contributory negligence since the accident had taken place while deceased Sukhwinder Singh alias Sukha was driving the motor cycle on which Darshan Singh was pillion rider and they were in the process of overtaking the offending tractor trolley. The negligence was found to the extent of 50% of both the drivers i.e. of deceased and respondent No.1. The Tribunal had assessed monthly income of the deceased as Rs.12,000/- per month from avocation of mason. However, no addition was made towards future prospects. In view of the judgment of Hon'ble the Supreme Court of India in a case of *National Insurance Company Ltd vs. Pranay Sethi and others*, passed in *Spl Leave Petition (Civil) No. 25590 of 2014*, decided on *October 31, 2017*, when the deceased was aged below 40 years then addition of 40% has to be made towards future prospects, meaning thereby that monthly income of the deceased is to be taken as Rs.16,800/-. Keeping in view the number of dependent family members, 1/3rd amount is to be deducted towards personal and living expenses of the deceased. In that way dependency of the claimants comes out to Rs.5,600/-. Considering the age of the deceased, multiplier of 17 is to be applied. Thus, total dependency comes out to Rs.22,84,800. The appellants-claimants are entitled to

Rs.70,000/- under the conventional heads. By adding that amount, the total compensation comes out to Rs.23,54,800/-(Rs.22,84,800+Rs.70,000/-). The Tribunal has awarded compensation of Rs.7,82,500/-. 50% of the amount is to be deducted towards contributory negligence. Thus, the additional amount payable to the appellants-claimants comes out to Rs.3,94,900/- which is liable to be paid jointly and severally by all the three respondents. The appellants-claimants shall be entitled to interest @ 7.5% per annum on this amount from the date of filing of the appeal till actual realization. The other directions with regard to the apportionment and mode of payment are same as given in the Award. In this way, the appeal is partly allowed.

(H.S. MADAAN)
JUDGE

November 06, 2019

sarita

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No