

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

FAO No.4830 of 2016 (O&M)

Date of decision : November 06, 2019

Amarjit Kaur and others

..... Appellants

Versus

Sandeep Singh and others

..... Respondents

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

Present:- Mr. Anil Kumar Spehia, Advocate for the appellants.

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

H.S. MADAAN (ORAL)

CM-16570-CII-2016

For the reasons mentioned in the application, delay of 175 days in filing the present appeal is condoned, subject to all just exception.

Application stands allowed.

Main Case

Briefly stated facts of the case are that on account of death of Darshan Singh, aged about 37 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 Amarjit Kaur, aged about 34 years, son Sandip Singh, aged about 18 years, minor daughter Mandeep Kaur, aged about 15 years and mother Maya, aged about 67 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 awarded total compensation of Rs.7,10,500/- with interest @ 7.5% per annum from the date of filing the claim petition till actual realization. The liability to pay this amount was held to be joint and several of all the three respondents.

Feeling aggrieved, the appellants-claimants have approached this Court by filing of the present appeal. On being put to notice, respondent-Insurance Company has put in appearance through counsel.

The Tribunal had taken the age of deceased to be 37 years and assessed monthly income of the deceased as Rs.12,000/- per month from avocation of mason. However, no addition has been 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 has to be assessed as Rs.16,800/-. Keeping in view the number of dependent family members, 1/4th amount is to be deducted towards personal and living expenses of the deceased. In that way dependency of the claimants comes out to Rs.4,200/-. Considering the age

of the deceased, multiplier of 15 is to be applied. Thus, total dependency comes out to Rs.22,68,000(Rs.12,600x12x15). The appellants-claimants are entitled to Rs.70,000/- under the conventional heads. By adding that amount, the total compensation comes out to Rs.23,38,800/-. The Tribunal has awarded compensation of Rs.7,10,500/-. The additional compensation is Rs.16,27,500.

The Tribunal observing that it is a case of contributory negligence had deducted 50% of the amount and granted remaining 50% to the appellants-claimants. Since, the deceased was a pillion rider on the motor cycle, the Tribunal obviously fell in error in doing so. It has to be taken as composite negligence where the owners, drivers and Insurance Companies of both the vehicles involved in the accident are to be held liable to pay compensation to the appellants-claimants. Though, the appellants-claimants have not impleaded the legal heirs of the deceased driver and Insurance Company of the motor cycle involved in the accident. Thus the Insurance Company of the offending vehicle on making payment of entire compensation amount with interest and cost can recover 50% of the amount from the owner, legal heirs of the driver and Insurance Company of motor cycle involved in the accident. Thus, the amount payable to the appellants-claimants comes out to Rs.16,27,500/-. The appellants-claimants shall be entitled to interest @ 7.5% per annum on this amount from the date of filing of claim petition till actual realization. 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