

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

F.A.O. No. 5297 of 2016

DATE OF DECISION :- September 19, 2019

Magma HDI General Insurance Co. Ltd.

...Appellant

Versus

Smt. Mamta and others

...Respondents

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

Present:- Mr. Vishal Aggarwal, Advocate
for the appellant-Insurance Company.

On account of death of Rajbir, aged about 41 years, statedly working as a Pujari in a temple and earning Rs.8100/- per month, in a road side accident which took place on 2.11.2014 at about 2.45 P.M., in area of near the cut of Sector 4-5 on G.T. Road, Karnal on account of rash and negligent driving of Dumper bearing Chasis No. MBYB19700CDA25086ND63251580 by respondent No. 1 Suraj Mal, legal representatives of deceased namely his wife Mamta, minor daughters Ms. Uma Rani, Ms. Shivani and Ms. Anju, minor son Master Keshav and mother Smt. Murti had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Suraj Mal-driving of Dumper, Ashok Kumar-owner and Magma HDI General Insurance Company, Kokkatta-insurer of bearing Chasis No. MBYB19700CDA25086ND63251580 (hereinafter referred to as the offending Dumper).

On notice, all the three respondents appeared and offered a contest.

On conclusion of trial, Motor Accident Claims Tribunal, Karnal vide

Award dated 1.7.2016 accepted the petition and granted compensation of

Rs.16,70,600/- with interest at the rate of 9% per annum from the date of filing of claim petition till realization, the liability of all the three respondents to pay this amount being joint and several.

The respondent Insurance Company felt aggrieved by the amount of compensation awarded by the Tribunal has approached this Court by filing an appeal challenging the Award.

Notice of the appeal was given to the respondents who were duly served but have not put in appearance.

I have heard learned counsel for the appellant-Insurance Company besides going through the record.

Learned counsel for the appellant-Insurance Company has contended that the Tribunal fell in error in treating the deceased as Pujari and taking his monthly income as Rs.8100/- when from the record it was not established that he was working as a Pujari, as such income should have been assessed as that of an unskilled worker, which at the relevant time as per Notification issued by Labour Commissioner, Haryana was Rs.5639.50/-. He has placed on record a copy of Notification in that respect. However, I do not agree with him on this point. Since there is enough evidence adduced by the claimants to show that the deceased was working as a Pujari, it being so the monthly income of deceased was correctly taken as Rs.8100/- as per D.C. Rates in Haryana during the period from 1.3.2014 to 28.2.2015 by the Tribunal, which cannot be said to be on higher side.

The Tribunal has not added any amount towards future prospects. In terms of the judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' in case the deceased was self employed and was in the age group of 40-50 years then addition of 25% is to be made towards future prospects. Doing that the monthly income of the deceased is taken to be 10,125/- (8100 + 2025). Keeping in view the number of dependent

family members $\frac{1}{4}^{\text{th}}$ of the amount is to be deducted towards personal and living expenses of the deceased. Doing that the amount comes out to be Rs.2531/- ($10,125 \times \frac{1}{4}$). In that way the dependency of the claimants comes out to Rs.7594 ($10,125 - 2531$). Therefore, the annual dependency comes out to Rs.91,128/- (7594×12). The Tribunal has rightly used multiplier of 14, therefore, his total dependency comes out to Rs.12,75,792/- ($91,128 \times 14$). The Tribunal has awarded a sum of Rs. 1 lac towards loss of consortium to his widow and Rs.5 lacs to the other claimants for loss of love and affection, care and guidance of parents and children. However, in terms of the judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' only a sum of Rs.70,000/- is to be awarded under the conventional Heads. The total compensation comes out to Rs.13,45,792/-. The Tribunal has awarded compensation of Rs.16,70,600/-. The Tribunal has further awarded interest at the rate of 9% per annum which in my view is on higher side and it should be reduced to 7.5%. Therefore, the compensation awarded is reduced to Rs.13,45,792/- with interest at the rate of Rs.7.5% per annum from date of filing of the claim petition till actual realization.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

September 19, 2019
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No