

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

F.A.O. No. 6416 of 2015

DATE OF DECISION :- November 02, 2019

Kamaljit Kaur and others

...Appellants

Versus

Tanwinderpal Singh and another

...Respondents

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

Present:- Mr. Gurminder Singh Salana, Advocate for the appellants.

Mr. Punit Jain, Advocate
for Mr. M.B. Jain, Advocate for respondent No. 2.

Briefly stated the facts of the case are that on account of death of Kulvir Singh, aged about 35 years, an agriculturist by avocation, in a road side accident, which took place on 10.4.2014 at about 9 P.M., in the area of Madhopur Bye pass road leading to Aam Khas Bag, Sirhind, statedly on account of rash and negligent driving of Tempu Tata ACE bearing registration No. PB-65R-8409 by respondent No. 1 Tanwinderpal Singh, legal representatives of such deceased namely his widow Smt. Kamaljit Kaur, minor daughter Navneet Kaur, minor son Manshpreet Singh and mother Smt. Puran Kaur, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Tanwinderpal Singh-owner and driver and Bharti AXA General Insurance Co. Ltd, Chandigarh-insurer of Tempu Tata Ace bearing registration No. PB-65R-8409 (hereinafter referred to as the

offending vehicle), claiming compensation.

On being put to notice, both the three respondents filed separate written statements contesting the claim petition. Issued on merits were framed. The parties were afforded adequate opportunities to lead evidence.

Thereafter hearing arguments advanced by learned counsel for the parties, the Motor Accident Claims Tribunal, Fatehgarh Sahib vide Award dated 5.5.2015 accepted the claim petition and awarded compensation of Rs.8 lacs to the claimants which included a sum of Rs. 1 lac to Kamaljit Kaur, widow of the deceased on account of loss of consortium. The liability of both the respondents was held to be joint and several. Interest at the rate of 7% per annum was granted on such amount from the date of filing of claim petition till actual realization. The remaining amount of Rs.7 lacs was ordered to be apportioned amongst the claimants as under :-

1. Claimant No. 1 widow of the deceased to the extent of 50%.
2. Claimants No. 2 and 3 minor children of the deceased, to the extent of 20% each.
3. Claimant No. 4 mother of the deceased to the extent of 10%.

The claimants were not satisfied with the compensation awarded to them by the Motor Accident Claims Tribunal, Fatehgarh Sahib and have brought the present appeal seeking enhancement of compensation of the said amount.

Notice of the appeal was given to the respondent-Insurance Company which has put in appearance through counsel.

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

The Tribunal on analysis of evidence adduced before it by the

parties has given a finding that respondent No. 1 was responsible for the accident in which Kulvir Singh suffered injuries to which he had succumbed on account of rash and negligent driving of the offending vehicle. The finding has been properly given and no reason is there to accept the same. In that way the claimant, who are legal representatives of the deceased are entitled to recover compensation from Tanwinderpal Singh-owner and driver and Bharti AXA General Insurance Co. Ltd, Chandigarh-insurer of the offending vehicle, the liability being joint and several since the offending vehicle was duly insured with such Insurance Company at the time of accident and no fault of any term or condition of the Insurance policy has been shown. Next coming to the quantum of compensation, the Tribunal has rightly taken the age of the deceased to be 35 years and his avocation as an agriculturist. However, the amount of monthly income of deceased assessed as Rs.5,000/- is certainly on lower side when the prevalent minimum wages in the State of Punjab at relevant time were Rs.6467/- for an unskilled worker and Rs.7247/- for an skilled worker just not disputed by learned counsel for the Insurance Company. An agriculturist melving his land and the services rendered by him in that regard are certainly be not taken to be less than that of an skilled worker. Therefore, the monthly income of the deceased is taken as Rs.7247/- say Rs.7250/-. 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**' where age of the deceased was below 35 years then addition of 40% is to be made towards future prospects. Doing that the monthly income of the deceased is worked out to be Rs.10,150/- (7250 + 2900).

Keeping in view the number of dependent family members, in

view of judgment "*Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3)RCR Civil 77*" 1/4th of this amount is to be deducted towards personal and living expenses of the deceased. Doing that the dependency of the claimants come out to Rs.7612/-. The annual dependency comes out to Rs.91,350/- (7612 x 12). The Tribunal has used the multiplier of 15. In terms of judgment "*Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3)RCR Civil 77*" when the deceased was in the age group of 31-35 years multiplier of 16 should be used. Doing that the total compensation comes out to Rs.14,61,600/- (91350 x 16). The claimants are entitled to get Rs.70,000/- under conventional Heads in view of judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*'. In that way total compensation comes out to Rs.15,31,600/-. The Tribunal has awarded compensation of Rs. 8 lacs. Thus the claimants are entitled to get additional compensation of Rs.73,1600/- with interest at the rate of 7.5% per annum from the date of filing of claim petition till actual realization. The liability to pay such compensation shall be joint and several for both the respondents. The amount of enhanced compensation shall be apportioned amongst the claimants in same shares as directed by the Tribunal in the Award.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

November 02, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No