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

FAO-6902-2015(O&M) with
XOBJC-48-CII-2016
Date of decision:-19.11.2019

United India Insurance Co. Ltd.

...Appellant

Versus

Monika and others

...Respondents

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

Present: Mr.D.P. Gupta, Advocate
for the appellant.

Mr.Vikram Bali, Advocate
for respondents No.1 to 4/cross-objectors.

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**H.S. MADAAN, J.**

Briefly stated, facts of the case are that on account of death of Sh.Paramjit Singh son of Sh.Gurdev Singh in a motor vehicular accident, which took place on 6.9.2013 in the area of bus stand Kharar, statedly on account of rash and negligent driving of truck bearing registration No.HR45-A-9357 (hereinafter referred to as the offending vehicle) by respondent No.1 Sharanjit Singh, legal heirs/legal representatives of the deceased, namely his widow Monika, aged about 27 years, minor daughters Baby Sneha and Baby Komal, aged about 13 years and 7 years, respectively and minor son - Master Abhishek aged about 4 years had brought a claim petition under Section 166 of the Motor Vehicles Act,

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1988 against respondents i.e. Sharanjit Singh – driver, Jaspal Singh – owner and United India Insurance Company Ltd. - insurer of the offending vehicle. They had also impleaded Ms.Pushpinder Kaur, aged about 65 years, mother of deceased as proforma respondent No.4 in the claim petition, claiming compensation.

On being put to notice, respondents No.1 to 3 had appeared and filed written statements contesting the claim petition. Issues on merits were framed. Both the parties were afforded adequate opportunities to lead evidence.

After hearing arguments on conclusion of trial, the Motor Accidents Claims Tribunal, SAS Nagar (hereinafter referred to as the Tribunal) while allowing the petition vide award dated 31.7.2015, awarded compensation of Rs.23,56,515/- to the claimants and proforma respondent No.4, payable by respondents No.1 to 3 jointly and severally along with interest @ 6% per annum, in case the payment was made within three months, failing which, the claimants would be entitled to claim interest at the rate of 9% per annum and the interest would be chargeable from the date of filing of the claim petition till the actual date of realization. The detailed directions with regard to manner and mode of payment and apportionment have been given in the award.

Feeling aggrieved by the said award, the respondent No.3 – insurance company filed an appeal before this Court, notice of which was given to respondents. Respondents No.1 to 4/claimants have put in appearance through counsel and filed cross-objections seeking enhancement of compensation, which request is being opposed by

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appellant – insurance company.

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

The Tribunal on analysis of the evidence adduced before it especially the eye-witness account provided by PW2 Jaswinder Singh, who had deposed inconsonance with the case of the claimants and FIR lodged by him copy Ex.P13 as well as postmortem report Ex.P14 of deceased, in absence of any evidence adduced by the respondents in rebuttal, came to the conclusion that respondent No.1 had caused the accident by his rash and negligent driving of the offending vehicle, in which Paramjit Singh had suffered injuries and had died. This finding is proper and appropriate and does not call for any interference.

While quantifying the compensation payable to the claimants, the Tribunal had taken the age of deceased as 39 years, his avocation as a technician and monthly income Rs.7,526/- therefrom per month, separate conveyance allowance of Rs.3,000/- has been added to such income, making it Rs.10,526/-.

Learned counsel for the appellant – insurance company has contended that conveyance allowance of Rs.3,000/- was wrongly added to the monthly income of the deceased since it was reimbursement of the amount spent by the deceased and personal to him, therefore, should not have been considered while assessing the monthly income of the deceased.

On the other hand, learned counsel for the claimants/respondents has contended that the Tribunal was justified in

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adding that amount while assessing monthly income of the deceased. He has referred to judgment by a Co-ordinate Bench of this Court in ***Monika and others Versus Rajender Kumar and others*** in FAO Nos.791 and 1397 of 2016 (O&M) and Cross Objections No.13-C of 2017 in/and FAO No.1398 of 2016(O&M) decided on 14.5.2019 wherein it had been observed that the conveyance allowance and ration allowance cannot be excluded from the salary for computing loss of dependency. While saying so, reliance was placed upon ***National Insurance Company Ltd. Versus Indira Srivastava and others, 2008(1) RCR(Civil)359*** and ***Manasvi Jain V. Delhi Transport Corporation 2014(3) RCR(Civil) 313***.

Therefore, I find that the Tribunal was justified in taking into consideration the conveyance allowance payable to the deceased while computing his monthly income.

The next contention of learned counsel for the insurance company was that the Tribunal has wrongly added 50% of this amount towards future prospects. He has further contended that in terms of the authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** the claimants are entitled to get a sum of Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. But the Tribunal has wrongly awarded a sum of Rs.1 lakh on account of consortium to the widow, Rs.1 lakh for loss of care and guidance for minor children and Rs.25,000/- on account of funeral expenses.

The deceased was serving as a technician in a private firm and can be taken to have a permanent job. He was aged below 40 years

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i.e. 39 years at the time of his death in the accident. Therefore, 50% of the salary was rightly added. 1/4th of the amount was rightly deducted by the Tribunal towards personal and living expenses of the deceased and the Tribunal was also justified in adopting multiplier of 15, in that way calculating the compensation amount to be Rs.21,31,515/-. However, the amount of Rs.1 lakh awarded to the widow on account of loss of consortium, Rs.1 lakh for loss of care and guidance for minor children and Rs.25,000/- as funeral expenses is not justified and in view of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get a sum of Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses.

Thus, the total compensation amount comes out to Rs.22,01,515/-(21,31,515 + 70,000).

Therefore, the appeal filed by the Insurance company is allowed partly and compensation awarded to claimant is reduced from Rs.23,56,515 to Rs.22,01,515/-. The interest granted and other terms and conditions for payment of compensation shall remain the same as given in the award. The share of the claimants shall be reduced proportionately.

With such modifications, FAO-6902-2015 filed on behalf of Insurance Company is allowed partly with costs.

If the amount of compensation has already been paid by the Insurance company, the claimants shall refund the same to the Insurance Company otherwise the Insurance Company shall be entitled to recover the difference in amount from the claimants as per law by way of filing an

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execution application before the Tribunal.

In view of the above discussion, XOBJC-48-CII-2016 filed on behalf of the claimants being devoid of merit stand dismissed.

19.11.2019 **(H.S.MADAAN)**
Brij **JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**

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