

In the High Court of Punjab and Haryana at Chandigarh

**FAO- 6126 of 2019 (O&M)
Date of Decision: 26.9.2019**

Oriental Insurance Company Limited

---Appellant

versus

Kalla and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. G.D.Ranga, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 14.5.2019 passed by The Motor Accidents Claims Tribunal, Gurugram (in short “the Tribunal”) whereby compensation has been assessed on account of death of Asfak in a motor vehicular accident that took place on 26.5.2018.

Counsel for the appellant has assailed the award with regard to findings of the Tribunal on issue No. 1 and quantum of compensation. It is argued that contributory negligence is liable to be attributed to deceased for the unfortunate occurrence as he was in middle of the road at the time of occurrence. The Tribunal has wrongly assessed income of deceased at Rs. 8500/- per month but in State of Rajasthan, minimum wage at the relevant time was less than Rs. 6000/- per month. Father of deceased cannot be held to be dependent upon him, in view of testimony of another son of the

family, examined as a witness.

Claimants examined Nasru Khan PW4, an eye witness to the occurrence. He tendered into evidence affidavit Ex. PW4/A and reiterated version of the claimants that accident is the result of rash and negligent driving of offending vehicle by Virender Singh (respondent No.1 therein). The Tribunal has noticed that as per testimony of Nasru Khan, Asfak son of Moj Khan, Rohit son of Rashid, Aasif son of Moj Khan and Aakit son of Deenu were talking to each other near Bhandar Nahar after parking their motor cycles. In the meantime, offending vehicle bearing No. HR/69/TMP/2018/514 driven by respondent No. 1 came there and hit those persons and all of them received injuries on their bodies but Asfak died at the spot. Counsel has failed to point out any materials in cross examination of Nasru Khan to discard or disbelieve his testimony. He has also failed to refer to any materials on record on the basis whereof contributory negligence can be attributed to deceased or claimants can be denied compensation to that extent. In this view of the matter, I do not find an error much less illegality in findings of the Tribunal determining issue No. 1 in favour of the claimants and against the respondents therein.

The parents of deceased have given their address being resident of village Punay Tehsil Nagar, District Bharatpur Rajasthan but presently residing at Javed Colony, Sohna, Tehsil Sohna District Gurugram. Counsel has failed to point out any evidence on record that deceased was a resident of Rajasthan and as such minimum wage prevalent there is to be taken into consideration for computing loss of dependency. Taking a clue from notification issued by the State of Haryana, I do not find any reason to interfere in assessment of income of deceased made by the

Tribunal. The other criteria adopted by the Tribunal for computing compensation is in complete consonance with judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270.**

The claim application has been filed by unfortunate parents of deceased Asfak. Even if father of deceased was not dependent upon him (deceased) and only mother is held entitle to compensation, the criteria adopted by the Tribunal for computing compensation does not warrant intervention.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to the claimants if they file an appeal for enhancement of compensation.

(Rekha Mittal)
Judge

26.9.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No