

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

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FAO-1448-2017 (O&M)

Date of decision: 26.09.2019

ORIENTAL INSURANCE CO LTD

... Appellant

Versus

PYARE LAL AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. DP Gupta, Advocate for the appellant.
Mr. Mukesh Yadav, Advocate for the claimants.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 17.09.2016 passed by the Motor Accidents Claims Tribunal, Bhiwani on account of death of Virender in a motor vehicular accident that took place on 24.08.2015.

Counsel for the appellant would inform that appeal has been filed to assail findings of the Tribunal on issue No.1 as well as quantum of compensation.

The Tribunal awarded Rs.14,21,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.8000/-
Addition in income for future prospects	50%
Multiplier	18
Deduction for personal expenses	50%
Loss of dependency	Rs.29,96,000/-
Expenses on funeral	Rs.25,000/-
Loss of love and affection	Rs.1,00,000/-

To assail findings of the Tribunal on issue No.1, the sole submission made by counsel for the appellant is that as three persons were travelling on the motorcycle driven by Ishwar on which Virender was a pillion rider, contributory negligence is liable to be attributed to driver of the motorcycle as well as the deceased and claimants are not entitle to compensation to the extent of negligence attributable to the deceased. It is further argued that income of the deceased assessed by the Tribunal is on higher side. Addition in income for future prospects and compensation allowed under conventional heads may be modified in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs.**

Pranay Sethi and Ors., 2017 SCC 1270.

Counsel representing the claimants/respondents, on the contrary, has supported findings of the Tribunal on issue No.1 and so also assessment of compensation by the Tribunal.

Counsel for the appellant has failed to point out that travelling of three persons on the motorcycle has in any manner contributed to the causing of accident on the basis whereof negligence can be attributed to the deceased who was one of the pillion riders on the motorcycle driven by Ishwar. That being so, contention raised by the insurance company to assail findings of the Tribunal on issue No.1 is not meritorious, thus, untenable.

The deceased was 24 years old at the time of unfortunate occurrence. Plea of the claimants is that deceased was driver and owner of mini tempo used for the business of transportation thereby earning Rs.25,000/- per month. The claimants did not produce any document with regard to ownership of mini tempo by the deceased much less his doing any business of transporter. However, they placed on record certificates of middle class and board of secondary education. Taking a clue from notification issued by the State of Haryana fixing minimum wage coupled with educational qualification of the deceased, income of the deceased is assessed at Rs.6400/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.9,67,680/- $[(6400 \times 12 \times 18) + (40\% \text{ future prospects}) - (50\% \text{ deduction for personal expenses})]$.

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

Total compensation is Rs.9,97,680/- and compensation assessed by the Tribunal is reduced to the extent of Rs.4,23,320/- (14,21,000 - 9,97,680). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

26.09.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No