

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

FAO No.4604 of 2017 (O&M)

Date of decision: 09.04.2019

The Oriental Insurance Co. Ltd.

... Appellant

Versus

Sunita and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjiv K. Pabbi, Advocate
for the appellant.

Ms. Neha, Advocate for
Mr. Abhimanyu Singh, Advocate for respondents No.1 to 4.

Mr. Virendra Rana, Advocate

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 27.02.2017 passed by the Motor Accidents Claims Tribunal, Jhajjar whereby compensation has been assessed on account of death of Deepak son of Naresh Kumar in a motor vehicular accident that took place on 04.03.2015.

Counsel for the insurance company would inform that the appeal has been preferred to express grievance with regard to findings of the Tribunal on issue No.1 and quantum of compensation assessed by the Tribunal.

The Tribunal has awarded Rs.18,80,000/-, detailed hereunder:-

1. Annual income of the deceased

Rs.1,30,000/-

2. Addition in income for future prospects	50%
3. Multiplier	18
4. Deduction for personal expenses	50%
5. Loss of dependency	Rs.17,55,000/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of love and affection	Rs.1,00,000/-

Counsel for the appellant would argue that testimony of Rajesh PW1 is not sufficient to discharge onus of issue No.1, pertaining to accident being the result of rash and negligent driving of offending vehicle by Sh. Chavand Singh Rajput. With regard to quantum of compensation, counsel would urge that addition in income for future prospects and compensation under conventional heads are liable to be reduced 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, on the contrary, has supported assessment made by the Tribunal.

The contention raised by the insurance company to assail findings of the Tribunal on issue No.1 is not meritorious. The Tribunal, on a detailed consideration of testimony of Rajesh PW1, author of FIR lodged against driver of the offending vehicle has rightly recorded its finding that accident took place due to rash and negligent driving of offending vehicle. This apart, driver of the offending vehicle did not appear in the witness box to counter case of the claimants and rebut testimony of Rajesh PW1. In this view of the matter, findings of the Tribunal on issue No.1 cannot be faulted with.

As has been rightly argued by counsel for the insurance company, addition in income for future prospects would be 40% as against 50% allowed by the Tribunal. However, income of the deceased, multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.16,38,000/- [(130000 x 18) + (40% future prospects) – (50% 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.16,68,000/- and compensation allowed by the Tribunal is reduced to the extent of Rs.2,12,000/- (18,80,000 - 16,68,000). 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.

09.04.2019
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No