

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

267

FAO-4043-2018 (O&M)

Date of decision: 09.05.2019

UNITED INDIA INSURANCE CO LTD

... Appellant

Versus

POONAM AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Harsh Aggarwal, Advocate for the appellant.

Mr. Sanjay Jain, Advocate for respondents No.1 to 5.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 18.04.2018 passed by the Motor Accidents Claims Tribunal, Ambala whereby compensation has been assessed on account of death of Vipin Kumar in a motor vehicular that took place on 26.02.2017.

Counsel for the insurance company would inform that the appeal has been preferred to assail only quantum of compensation assessed by the Tribunal.

The Tribunal awarded Rs.19,11,736/- (rounded off to Rs.19,12,000/-), detailed hereunder:-

1. Monthly income of the deceased	Rs.12,593/-
2. Addition in income for future prospects	25%
3. Multiplier	13
4. Deduction for personal expenses	1/4 th
5. Loss of dependency	Rs.18,41,736/-
6. Expenses on funeral	Rs.15,000/-
7. Loss of estate	Rs.15,000/-
8. Loss of consortium	Rs.40,000/-

The sole submission made by counsel for the appellant-insurance company is that income of the deceased is assessed on the basis of Deputy Commissioner's rates meant for payment of wages out of contingency fund of the State Government. It is argued that minimum wage of an unskilled worker at the relevant time was far below than income assessed by the Tribunal.

Counsel for the respondents/claimants, on the contrary, has supported assessment of compensation by the Tribunal. However, he would

state that there is some arithmetical mistake in calculations.

Vipin Kumar deceased was born in the year 1968 as per the document Ex.P3 i.e. Aadhar Card and as such, he was less than 51 years of age at the time of occurrence. He left behind family consisting of his widow, three daughters and one son. The youngest child was stated to be 7 years old at the time occurrence. Apart from the testimony of Diksha, daughter of the deceased, there is no evidence with regard to avocation and income of the deceased. The claimants did not produce any documentary evidence to substantiate that the deceased was an agriculturist. As has been rightly argued by counsel for the appellant, Deputy Commissioner's rates are meant for payment of wages to the employees out of contingency fund maintained by the State Government. In absence of any evidence with regard to avocation and income of the deceased, there is no alternative with the Court except to derive some clue from notification issued by the State Government fixing minimum wage at the relevant time. Taking into account the notification in force at the relevant time coupled with that deceased had left behind family of four children and a widow, income of the deceased is assessed at Rs.9000/- per month. The addition in income for future prospects, multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.13,16,250/- $[(9000 \times 12 \times 13) + (25\% \text{ future prospects}) - (1/4^{\text{th}} \text{ deduction for personal expenses})]$.

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total amount is Rs.13,86,250/- and compensation assessed by the Tribunal is reduced to the extent of Rs.5,25,750/- (19,12,000 - 13,86,250). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the

Tribunal.

The appeal is partly allowed in the aforesaid terms.

09.05.2019

(REKHA MITTAL)
JUDGE

ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No