

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 6728 of 2017 (O&M)

Date of Decision: 02.09.2019

SHRIRAM General Insurance Company Limited

..... Appellant

Versus

Manjit Kaur and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Punit Jain, Advocate,
for the appellant.

Mr. Ajay Pal Singh, Advocate, for
Mr. Kanwal Goyal, Advocate,
for respondents No.1 to 3.

JAISHREE THAKUR, J.

CM-21815-CIL-2017

This is an application that has been filed under Section 5 of the Limitation Act seeking condonation of delay of 52 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed.

Delay of 52 days in filing the appeal stands condoned.

FAO No. 6728 of 2017

1. This is an appeal that has been filed by the Insurance Company for setting aside the award dated 19.01.2017 passed by the

Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as 'the Tribunal') whereby a compensation of ₹ 12,48,000/- along with interest @ 6% per annum was granted on account of death of Prem Singh in a motor vehicular accident, which had allegedly taken place on 31.07.2012.

2. In brief, facts of the case are that a claim petition came to be filed by Manjit Kaur-petitioner No.1, who is the widow; Simran Kaur-Petitioner No.2, who is the minor daughter and Harkawal Singh-petitioner No.3, who is the minor son of deceased, namely Prem Singh. It was alleged that on 31.07.2012 Mohan Singh, son of Gurcharan Singh, brother of deceased Prem Singh, had gone to Jalandhar in connection with his domestic affairs. Prem Singh gave information to Mohan Singh that he also had to go to Sunam and asked him to wait for him at PAP Chowk, Jalandhar and he would meet him there. At about 3.00 P.M. when Prem Singh reached near PAP Chowk, Jalandhar on his motor cycle bearing No.PB-13W-2490, a truck No. HR-37-C-9813 being driven by its driver respondent No.2 Harjinder Singh in a rash and negligent manner, rammed into the motor cycle of Prem Singh in presence of Mohan Singh, due to which Prem Singh came under the tyres of the said truck. After the accident, the driver of the truck fled away from the spot. Prem Singh injured was shifted to Johal Hospital by Mohan Singh, where he died after some time. The matter was reported to the police of Police Station, Rama Mandi, Jalandhar and on the basis of the statement of Mohan

Singh, an FIR No. 153 dated 31.07.2012 under Sections 304-A, 279, 427 IPC came to be registered against respondent No.2. It was further alleged that the deceased was a medical practitioner and he was earning ₹ 20,000/- per month. On these facts, compensation was claimed.

3. Respondent No.2 was ex parte before the Tribunal. However, respondents No. 1 & 3 filed their separate written statement.

4. Respondent No.1 in his written statement has denied all the allegations while stating that no accident had taken place and the truck bearing registration No.HR-37C-9813 was not involved in the accident. The FIR was got lodged by the claimants in connivance with the police. The answering respondent is not liable to pay any compensation and dismissal of the claim petition was prayed for.

5. In the separate written statement filed by respondent No.3 -the Insurance Company, it was alleged that it was a case of contributory negligence on the part of the deceased and respondent No.3. It was also alleged that an exorbitant amount was claimed. Accordingly, it was alleged that the Insurance Company is not liable to pay the compensation.

6. From the pleadings of the parties, the Tribunal framed the following issues :-

"1. Whether Prem Singh son of Gurcharan Singh died in a Motor vehicle accident which took place on 31.07.2012 at about 03.00 pm in the area of PAP

Chowk, Jalandhar on account of rash and negligent driving of truck bearing registration no. HR-37-C-9813 by respondent no.1 Mangal Singh ?OPA

2. *If issue No.1 is proved whether the claimants are entitled to compensation, if so to what extent and from which of the respondents? OPA*
3. *Whether the claim petition is not maintainable under Section 163-A of the Motor Vehicle Act ?OPR*
4. *Whether the driver of truck no. HR-37-C-9813 was not holding valid and effective driving licence at the time of accident, if so its effect?OPR*
5. *Whether the owner of the truck has committed breach of any other condition of the Insurance Policy, if so its effect (wrongly mentioned as correct) ?OPR*
6. *Relief.”*

7. The parties led their respective evidence in support of their pleadings and on the basis of the findings, the Tribunal by considering his income to be ₹ 8,000/- per month, adding 50% towards future prospects, and deducted 1/3rd towards personal and living expenses and by applying multiplier of 13 allowed compensation @ ₹ 12,48,000/-. In addition, to it another sum of ₹ 25,000/- was allowed towards funeral expenses and ₹ 1,00,000/- on account of loss of consortium to claimant (wife). Consequently, respondent No.3/appellant herein was directed to pay compensation amount.

8. Learned counsel appearing on behalf of the appellant-Insurance Company contends that the compensation awarded for the accident that occurred is not in terms of the judgment rendered by

Hon'ble Apex Court of India in *National Insurance Co. Ltd. Vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009* decided on 31.10.2017 a sum of ₹ 1,00,000/- towards loss of consortium and ₹ 25,000/- for funeral expenses, over and above, the compensation payable on account of the accident, has been allowed. He further submits that the Tribunal has erred while awarding 50% future prospects since no evidence was brought regarding future prospects of the deceased. Whereas, learned counsel appearing on behalf of the claimants/ respondents would submit that the Tribunal has allowed just and adequate compensation to the claimants and the same does not call for any interference by this Court.

9. I have heard learned counsel for the parties and find that the award that has been passed needs to be modified in terms of the judgment rendered by the Constitutional Bench of the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs. Pranay Sethi and others* case (supra).

10. It is not in dispute that deceased was 48 years of age as his date of birth was 03.04.1964 and the accident took place on 31.07.2012 and according to his age, the multiplier of 13 is just and proper. The Tribunal has rightly taken his income to be ₹ 8,000/- as there was no proof regarding his income. Further more, 25% increase instead of 50% towards future prospects would be justified and by adding the same, the annual income of the deceased comes out to ₹ 10,000/-. Keeping in view three dependents, the dependency would

work out to 1/3rd which would amount to ₹ 6,667/- and keeping in view age of the deceased to be 48 years, the multiplier is taken as 13, as was also taken by the Tribunal, and therefore, compensation payable to the claimants-appellants is re-worked and tabulated as under :-

Sr. No	Heads	Calculation
(i)	Name of the deceased	Prem Singh
(ii)	Date of accident	31.07.2012
(iii)	Age of the deceased	48 years
(iv)	Monthly income of the deceased	₹ 8,000/-
(v)	25% of (iv) is to be added towards future prospects	(₹ 8,000 + ₹ 2,000) = ₹ 10,000/- per month
(vi)	1/3 rd of (v) above deducted towards personal expenses	(₹ 10,000 - ₹ 3,333) = ₹ 6,667/- per month
(vii)	Compensation calculated after applying the multiplier of 13	₹ 6,667 x 12 x 13 = ₹10,40,052/-
(viii)	Conventional heads i.e. loss of consortium and funeral expenses etc.	₹ 70,000/-
	Total	₹11,10,052/-

11. Consequently, the compensation payable comes to ₹11,10,052 /-. The claimants would not be entitled to ₹ 1,00,000/- towards loss of consortium to the wife as lump sum amount of ₹ 70,000/- is allowed under conventional heads as per the judgment rendered by the Supreme Court in *National Insurance Co. Ltd. Vs. Pranay Sethi and others* case (supra), the compensation would be allowed by decreasing the same from ₹ 12,48,000/- to ₹11,10,052 /- due to decrease of future prospects from 50% to 25%.

12. In view of the above, the appeal is allowed and

consequently the compensation awarded is decreased from ₹ 12,48,000/- to ₹11,10,052 /-.

13. The award is modified and the appeal is allowed to the above extent.

02.09.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.