

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

209

FAO-6779-2017 (O&M)

Date of decision: 20.12.2019

ORIENTAL INSURANCE CO LTD

... Appellant

Versus

SHEELA AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. RK Bashamboo, Advocate for the appellant.
Mr. Aman Dhir, Advocate/guardian ad litem
for respondents No.2 and 3.
Mr. Rohit Arya, AAG, Haryana.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 31.05.2017 passed by the Motor Accidents Claims Tribunal, Sonapat whereby compensation has been assessed on account of death of Sanjay in a motor vehicular accident that took place on 08.08.2016.

Counsel for the insurance company would inform that appeal has been filed to assail only quantum of compensation.

The Tribunal awarded Rs.20,61,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.8000/-
Addition in income for future prospects	50%
Multiplier	17
Deduction for personal expenses	1/4 th
Loss of dependency	Rs.18,36,000/-
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-

The plea of claimants is that deceased was running a piggery farm thereby earning Rs.30,000/- per month. However, they failed to adduce sufficient much less cogent evidence to establish their plea in this regard. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.8100/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses and multiplier allowed by the Tribunal are affirmed. In this manner, loss of dependency is calculated at Rs.17,35,020/- [(8100 x 12 x 17) + (40% future prospects) –

(1/4th deduction for personal expenses)].

The Tribunal has awarded Rs.2,25,000/- under conventional heads. Counsel for the claimants (appointed as guardian ad litem) would argue that claimants may be extended benefit of filial consortium. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333.**

The plea of claimants for grant of filial consortium in the light of judgment in **Magma General Insurance Co. Ltd.'s case (supra)** is not tenable, in view of decision by the Constitution Bench in **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and decision by a three Judge Bench in **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034** subsequent to decision in **Magma General Insurance Co. Ltd.'s case (supra)**. Thus, compensation under conventional heads is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

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

Total compensation is Rs.18,05,020/- and compensation assessed by the Tribunal is reduced to the extent of Rs.2,55,980/- (20,61,000 - 18,05,020). The insurance company shall be entitle to recover the excess amount, if already paid/deposited, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

20.12.2019

ashok

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No