

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

-.-

FAO 4189 of 2016 (O&M)

Date of decision: 11.09.2019

New India Assurance Company Limited

.....Appellant

Versus

Sudesh and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Vinod Gupta, Advocate
for the appellant

Mr. Parmod Parmar, Advocate
for respondent No. 1 to 5

Mr. Mayank Mathur, Advocate (guardian ad litem)

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against award dated 26.04.2016 passed by the Motor Accidents Claims Tribunal, Jhajjar (in short, 'the Tribunal') whereby compensation has been assessed on account of death of Bablu son of Ram Chander in a motor vehicular accident that took place on 21.01.2012.

Counsel for the insurance company 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.14,10,200/-, detailed hereunder:-

-Monthly income of the deceased	Rs.5,600/-
-Addition in income for future prospects	50%

-Deduction for personal expenses	1/4 th
-Multiplier	17
-Loss of dependency	Rs.12,85,000/-
-Funeral expenses	Rs.25,000/-
-Loss of consortium	Rs.1,00,000/-

Counsel for the appellant would argue that as the occurrence is head on collision between the alleged offending truck bearing No. HR 61-A 3889 and truck bearing No. HR 46-A-7433, driven by the deceased, as admitted by Ram Chander (PW1), alleged eye witness to the occurrence, examined by the claimants, contributory negligence is liable to be attributed to the deceased and claimants are not entitle to compensation to the extent of negligence attributed to the deceased.

To assail quantum of compensation, counsel has submitted that addition in income for future prospects and compensation allowed under conventional heads may be modified in view of judgment of Hon'ble the Supreme Court *National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270*.

Counsel for the claimants, on the contrary, has supported findings of the Tribunal on issue No. 1 whereby driver of offending truck (HR 61-A-3889) has been held to be solely responsible for the accident due to rashness and negligence. He has further supported assessment of compensation made by the Tribunal.

Ram Chander (PW1), eye witness of the occurrence and author of FIR Ex.P1 was examined to substantiate plea of claimants that accident is the result of rash and negligent driving of offending truck by Vijender Singh - respondent No. 1 therein. Counsel for the appellant has failed to point out

any fact elicited in cross examination of Ram Chander (PW1) except that accident is head on collision between two vehicles to record finding that the deceased also contributed for the unfortunate occurrence on the fateful day of 21.01.2012. The mere fact that occurrence was head on collision *ipso facto* is not sufficient to attribute negligence to deceased. Indisputably, on due investigation of FIR registered against Vijender Singh, he was put to trial for committing offence punishable under Sections 279 and 304-A of Indian Penal Code. He did not appear in the witness box to explain the circumstances under which the accident in question took place, thus, an adverse inference is liable to be drawn against him. In the given circumstances, I do not find any reason to differ with findings of the Tribunal on issue No. 1 and accordingly the same are affirmed.

This brings the Court to compensation assessed by the Tribunal. An unfortunate occurrence took place when the deceased was driving truck No. HR 46-A-7433, a transport vehicle. Taking a clue from notification issued by the State of Haryana fixing minimum wage, income of deceased assessed by the Tribunal is affirmed. The claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is Rs.11,99,520/- [Rs.11,42,400/- i.e. $5,600 \times 12 \times 17$ + Rs.4,56,960/- (40% addition) - Rs.3,99,840/- (1/4th deduction)].

Under conventional heads, claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the

Supreme Court *Pranay Sethi's* case (supra) and *Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034*.

Total compensation is Rs.12,69,520/- and compensation allowed by the Tribunal is reduced to the extent of Rs.1,40,680/- (14,10,200 – 12,69,520). 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.

(Rekha Mittal)
Judge

11.09.2019
Mohan Bimbura

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

