

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

Date of Decision: 03.05.2019

1. FAO No. 6754 of 2017 (O&M)

United India Insurance Company Limited

..... Appellant

VERSUS

Smt. Sonia and others

..... Respondents

2. FAO No. 385 of 2018 (O&M)

Sonia and another

..... Appellants

VERSUS

Satyawan and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sanjiv Pabbi, Advocate,
for the appellant-Insurance Company
in **FAO No. 6754 of 2017**,
for the respondent-Insurance Company
in **FAO No. 385 of 2018**.

Mr. Vaibhav Goel, Advocate,
for the appellant(s) in **FAO No. 385 of 2018**,
for the respondent(s) in **FAO No. 6754 of 2017**.

JAISHREE THAKUR, J.

1. This Court proposes to dispose of the above referred two
appeals : one by the Insurance Company for setting aside the award

and the other by the claimants for enhancement of the award, which arise out of the same award dated 13.07.2017 passed by the Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as the 'Tribunal').

2. For brevity, facts are being extracted from FAO No. 385 of 2018.

3. A claim petition came to be filed by Sonia and others under Section 166 of the Motor Vehicles Act, 1988 to claim compensation on account of death of Dharmender @ Dholu in a motor vehicular accident, which took place on 13.05.2016, against Satyawar and others.

4. In brief, facts of the case are that a claim petition came to be filed by Sonia, petitioner No.1 who is the widow; Sourabh Petitioner No.2, who is the minor son and Smt. Ganga-respondent No.3, who is the mother of the deceased, namely Dharmender. It was alleged that on 13.05.2016, Dharmender (deceased) along with Sandeep son of Om Parkash and one Dinesh was on his way to his house on vehicle No. HR-46D1923. When they reached Ghasola Minor, the offending vehicle i.e. truck bearing registration No.HR-39D-5069 being driven by Satyawar respondent No.1 in a rash and negligent manner, came at a very high speed and struck against vehicle No.HR46D-1923. As a result of this, Dharmender and Sandeep fell down and became unconscious. On getting the information of the accident, Rajbir son of Rama Nand, resident of

village Loharwara, reached the spot and shifted the injured to Government Hospital, Charkhi Dadri. Due to serious condition, Sandeep was referred to PGIMS Rohtak. Dharmender @ Dhola died during the treatment. It was further alleged that the accident took place due to the rash and negligent driving of the offending vehicle by Respondent No.1. Rajbir (PW3) lodged FIR No.176 dated 14.05.2016, under Sections 279/304-A of IPC with Police Station Sadar Dadri. It was further alleged that the deceased was a driver and doing agricultural work was earning ₹ 25,000/- per month. On these facts, compensation was claimed

5. Respondent Nos.1 and 2 i.e. driver and owner of the offending vehicle in their joint written statement have denied all the allegations while stating that the truck bearing registration No.HR-39D-5069 was not involved in the accident. In the separate written statement filed by the Insurance Company an additional plea was taken that the driver of the offending vehicle was not holding any valid driving licence. It was also alleged that the claimants have filed the claim petition in collusion with Respondents No.1 and 2 an exorbitant amount was claimed. Accordingly, it was alleged that the Insurance Company is not liable to pay the compensation. Thereafter, issues were framed and the claimant-appellant Sonia herself stepped into the witness box as PW-1 and also examined Sandeep as PW-2, Rajbir as PW-3 and Gajanand as PW-4 apart from tendering relevant documents. On appreciation of evidence, the Tribunal held that the

accident in question resulting into the death of Dharmender @ Dholu was caused due to rash and negligent driving of the offending vehicle at the instance of its driver. The Tribunal assessed the income of the deceased at ₹ 8,000/- per month and taken his age to be more than 25 years on the date of accident and by relying upon the judgments rendered by the Hon'ble Supreme Court in ***Rajesh and others vs. Rajbir Singh and others, 2013 ACJ 1403*** and ***Munna Lal Jain & Anr. vs. Vipin Kumar Sharma and others, Civil Appeal No. 4497 of 2015 arising out of S.L.P. No. 8362 of 2013 {2015(1) J.T. Page 01 (Supreme Court)}***, 50% of the monthly income of the deceased was added towards his future prospects. After adding 50% on account of future prospects, the monthly income of the deceased came to be ₹ 12,000/- per month and the annual income to be ₹ 1,44,000/-. Multiplier of 17 was applied since the deceased was more than 25 years of age and 1/3rd deduction was allowed for his own expenses and the total annual dependency came to be ₹ 96,000/-. Accordingly, compensation came to be ₹ 96,000 x 17 = ₹ 16,32,000/- and general damages were allowed to the extent of funeral expenses, loss of consortium and loss of estate etc. Aggrieved against the said award, two appeals have been filed: one by the Insurance Company and other by the claimants.

6. 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, Special Leave Petition (Civil) No. 25590 of 2014*** decided on 31.10.2017 as the general damages that have been allowed i.e. a sum of ₹ 1,00,000/- towards loss of consortium, ₹ 25,000/- for funeral expenses and ₹ 5,000/- towards loss of estate, over and above, the compensation payable on account of the accident. Whereas, learned counsel appearing on behalf of the claimants would submit that the Tribunal has erred in taking the income of the deceased to be ₹ 8,000/- per month despite the fact that deceased was working as a driver. It is also argued that future prospects of the deceased have not been taken into account.

7. 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).

8. It is not in dispute that deceased was working as driver and his driving licence is available on the record. As per the Minimum Wages Act, a driver on a light vehicle was entitled to get a minimum amount of ₹ 9,695/- for the year 2016, the time when the accident took place. Having three dependents, the dependency would work out to 1/3rd which would amount to ₹ 6,463/- on which 40% increase would be applicable and by adding the same, the annual income of the deceased comes out to ₹ 9048/- and keeping in view

age of the deceased to be more than 25 years, the multiplier is taken as 17 and therefore, compensation payable to the claimants-appellants is re-worked and tabulated as under :-

Sr. No	Heads	Calculation
(i)	Name of the deceased	Dharmender @ Dholu
(ii)	Date of accident	13.05.2016
(iii)	Age of the deceased	25 years
(iv)	Monthly income of the deceased	₹ 9,695/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 9,695 + ₹ 3878) = ₹ 13,573/- per month
(vi)	1/3 rd of (v) above deducted towards personal expenses	(₹ 13,573 - ₹ 4,524) = ₹ 9049/- per month
(vii)	Compensation calculated after applying the multiplier of 17	₹ 9049 x 12 x 17 = ₹18,45,996/-
(viii)	Funeral expenses	₹ 15,000/-
(ix)	Compensation for loss of consortium	₹ 40,000/-
(x)	Compensation for loss of estate	₹ 15,000/-
	Total	₹19,15,996/-

Consequently, the compensation payable comes to ₹19,15,996/-. The claimants would not be entitled to the expenses as awarded by the Tribunal at ₹ 1,30,000/- since it is not in consonance with the judgment rendered in ***Pranay Sethi's*** case (supra), however, the compensation would be allowed to the claimants on account of increase in the income of the deceased and on account of future prospects.

9. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹ 17,62,000/- to ₹ 19,15,996/-.

10. The Insurance Company is directed to release the enhanced compensation in favour of the claimant-appellants with interest @ 7.5% per annum from the date of the appeal till realization.

11. Both the appeals are partly allowed in the aforesaid terms.

12. A photocopy of this order be placed on the file of the connected case.

03.05.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.