

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

Date of decision: 24.01.2020

FAO No.1955 of 2015 (O&M)

The New India Assurance Co. Ltd. ... Appellant

Versus

Inderjeet Kaur and others ... Respondents

FAO No.2457 of 2015 (O&M)

Inderjeet Kaur and another ... Appellants

Versus

Jaspal Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate
for insurance company.

Mr. Ram Kumar Saini, Advocate
for the claimants.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1955 and 2457 of 2015 as these have emerged out of the same award dated 24.12.2014 passed by the Motor Accidents Claims Tribunal, Kurukshetra whereby compensation has been assessed on account of death of Gurmej Singh in a motor vehicular accident that took place on 15.08.2013.

FAO No.1955 of 2015 has been filed by the New India Assurance Co. Ltd. (hereinafter referred to as 'the insurance company')

whereas the other appeal has been filed by the claimants seeking additional compensation.

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.13,22,840/-, detailed hereunder:-

Monthly income of the deceased	Rs.6655/-
Addition in income for future prospects	50%
Multiplier	15
Deduction for personal expenses	1/3 rd
Loss of dependency	Rs.11,97,840/-
Expenses on funeral	Rs.1,25,000/-
loss of estate, loss of consortium and loss of love and affection	

Counsel for the insurance company would argue that since the accident took place in middle of the road and it was head on collision between motorcycle driven by Gurmej Singh and offending bus bearing registration No.HR-65-1258 of Haryana Roadways, Kurukshetra Depot, Kurukshetra, contributory negligence is liable to be attributed to the deceased and claimants shall not be entitle to compensation to the extent of contributory negligence.

With regard to compensation, it is argued that addition for future prospects and compensation allowed under conventional heads may be modified, 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.**

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1. He would further argue that income assessed by the Tribunal is on lower side and needs enhancement. It is argued that jamabandi Ex.P5 for the year 2012-13 was produced on record with regard to ownership of the deceased.

The case set up by the claimants is that on the unfortunate day when the Nation was celebrating Independence Day of India, deceased met with accident resulting in abrupt termination of his life. It is averred that at about 6 pm when the deceased along with his friend Tirlochan Singh who was travelling on pillion seat of motorcycle No.HR-02-L-6262 driven by the deceased, offending vehicle came in a rash and negligent manner at a fast speed from opposite side and by coming on wrong side, struck against motorcycle driven by Gurmej Singh resulting in sustaining of multiple injuries by the deceased. FIR No.199 dated 16.08.2013 under Sections 279, 304-A and 337 IPC was registered at Police Station Ladwa.

Tirlochan Singh, pillion rider of motorcycle driven by the deceased, appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.PW1/A wherein he reiterated the version brought-forth by the claimants. In cross examination, the witness has deposed that accident occurred on the left side of the metaled road. At the time of accident, speed of the offending bus was more than 100 kms per hour. The right side of the bus hit against the motorcycle. He also suffered injury including fracture on his right foot. He was medico legally examined in

LNJP Hospital, Kurukshetra on the day of accident.

The insurance company examined Man Singh, Ahlmad from the Court of Judicial Magistrate Ist Class, Kurukshetra RW1 and he produced photocopy of site plan Ex.R6 and original thereof was available in the Court file brought by him.

Counsel would argue that as per the marginal notes appended on the site plan Ex.R6, point 'A' is the place where the occurrence in question took place because of collision between the offending vehicle and motorcycle driven by the deceased. It is further argued that Tirlochan Singh PW1 in cross examination had stated that rough site plan of the place of accident was prepared by the police in his presence and on identification of the spot by him. It is vehemently argued that keeping in view the site plan and marginal notes thereon coupled with testimony of Tirlochan Singh, it becomes undisputed position that accident took place in middle of the road, therefore, deceased cannot escape liability of contributory negligence.

Counsel for the claimants, while refuting contention of the insurance company would argue that Tirlochan Singh PW1 had categorically stated that accident took place because of rashness and negligence of offending vehicle. Jaspal Singh, driver of offending vehicle did not appear in the witness box to counter case of the claimants or testimony of Tirlochan Singh, therefore, an adverse inference is liable to be drawn against him for his non-examination. Another submission made by counsel is that site plan Ex.R6 does not bear signatures of Tirlochan Singh

nor the same was put to him in order to seek his response, if Ex.R6 is the same site plan which was prepared on his instructions.

Indisputably, driver of offending vehicle did not appear in the witness box to counter case of the claimants and as such, an adverse inference is liable to be drawn against respondents before the Tribunal. On due investigation of FIR registered at the behest of Tirlochan Singh, driver was put to trial for causing the accident. Though Tirlochan Singh had admitted that site plan was prepared on his identification but neither the original site plan nor copy thereof was put to the witness to seek affirmation, if the site plan available in the file of criminal trial is the same which was prepared at his instructions. The site plan Ex.R6 has not been attested by Tirlochan Singh. In the given circumstances, insurance company cannot derive any advantage to its contention from the site plan Ex.R6 or the fact that in the said site plan, site of accident has been shown in middle of the road more so that no suggestion was put to Tirlochan Singh that accident took place in middle of the road and his testimony with regard to accident being on right side of the road is incorrect. As such, it is difficult to accept contention of the insurance company that contributory negligence is liable to be attributed to the deceased or compensation to that extent may be deducted.

This brings the Court to compensation assessed by the Tribunal. The minimum wage of a skilled labour at the relevant time was less than Rs.6000/- per month. Perusal of document Ex.P5 reveals that

deceased was co-owner of agricultural land to the extent of approximately 5/6 acres. Accordingly, his income is assessed at Rs.10,000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40% as against 50% allowed by the Tribunal. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.16,80,000/- [(10,000 x 12 x 15) + (40% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed 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.17,50,000/- and additional amount is Rs.4,27,160/- (17,50,000 - 13,22,840), payable with interest @ 7.5% per annum from the date of petition till realization, in terms of award.

Disposed of accordingly.

24.01.2020
ashok

(REKHA MITTAL)
JUDGE

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