

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

Date of decision: 06.03.2020

FAO No.6057 of 2015 (O&M)

Cholamandalam M/s General Insurance Co. Ltd. ... Appellant

Versus

Smt. Reena and ors. ... Respondents

FAO No.7661 of 2015 (O&M)

Smt. Reena and ors. ... Appellants

Versus

Goldi @ Sanju and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

None for the appellants in FAO No.7661 of 2015.

Mr. Ishan Cooner, Advocate
for respondents No.2 and 3 in FAO No.6057 of 2015.

None for respondents No.5 and 8 in FAO No.6057 of 2015 and
respondents No.1 and 3 in FAO No.7661 of 2015.

Mr. Dinesh Maurya, Advocate for
Mr. G.S. Sandhu, Advocate
for respondents No.6 and 7 in FAO No.6057 of 2015
and respondents No.2 and 2A in FAO No.7661 of 2015.

REKHA MITTAL, J. (Oral)

CM No.19206-CII of 2015 in FAO No.6057 of 2015

Heard.

Allowed as prayed for. Delay of 28 days in filing the appeal stands condoned.

Main Cases

This order will dispose of FAO Nos.6057 and 7661 of 2015 as these have emerged out of the same award dated 17.04.2015 passed by the Motor Accidents Claims Tribunal, Kurukshetra whereby compensation has been assessed on account of death of Rajinder Kumar in a motor vehicular accident that took place on 14.05.2013.

FAO No.6057 of 2015 has been filed by Cholamandalam M/s General Insurance 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 and in the alternative to challenge quantum of compensation.

Counsel for the appellant-insurance company would argue that in the FIR Ex.P1 lodged at the behest of Raj Kumar son of Raghbir Singh, registration particulars of the offending vehicle are not mentioned. In addition, it is argued that as per the FIR, the person driving the tractor disclosed his name Sikender son of Krishan caste Balmiki resident of village Pharal but in the claim application name of driver has been changed being Goldi @ Sanju son of Rajinder Kumar resident of village Pharal.

With regard to quantum of compensation, it is argued that

Tribunal has assessed income of the deceased on the basis of Deputy Commissioner's rates, meant for payment to employees out of contingency fund created by the State Government. Compensation allowed under conventional heads may be restricted to Rs.70,000/-. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.**

Counsel representing the claimants/respondents has supported findings of the Tribunal on issue No.1. He has prayed for grant of additional compensation by extending benefit of future prospects.

The claimants examined Raj Kumar, author of FIR and alleged eye witness to the occurrence. He tendered into evidence his affidavit Ex.PW2/A by way of examination in chief and reiterated version of the claimants that accident is the result of rash and negligent driving of offending vehicle by Goldi. In cross examination, the witness had deposed that he had seen the vehicle from a distance of about one acre. Police recorded his statement in LNJP Hospital, Kurukshetra. At the time of recording statement, he disclosed the accident version in detail, manner of accident, particulars of vehicle and particulars of driver. However, the witness was not confronted with the contents of FIR being the first version purportedly recorded by the police and as such, there was no opportunity with the witness to explain the contradiction in his testimony before the Court and what was recorded in the FIR. On due investigation of FIR,

challan was presented against Goldi and Sikender was found innocent. The insurance company did not call upon Goldi to appear in the witness box nor he himself appeared in the witness box to counter version of the claimants and testimony of Raj Kumar. The proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence to be applied. In view of the above, I do not find any reason to interfere in findings of the Tribunal on issue No.1.

The Tribunal awarded Rs.18,72,408/-, detailed hereunder:-

Monthly income of the deceased	Rs.6655/-
Addition in income for future prospects	50%
Multiplier	16
Deduction for personal expenses	1/4 th
Loss of dependency	Rs.14,37,408/-
Expenses on funeral	Rs.25,000/-
Transportation expenses	Rs.10,000/-
Loss of consortium	Rs.1,00,000/-
loss of love and affection	
Loss of love and affection to claimants No.2 to 4	Rs.1,00,000/- (each)

The plea of claimants is that deceased was an agriculturist and doing dairy business but they failed to adduce sufficient much less cogent evidence to prove avocation and income of the deceased. As has been rightly argued by counsel for the insurance company that Deputy Commissioner's rates are meant for payment of wages to employees out of contingency fund. 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.5400/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner,

loss of dependency is calculated at Rs.10,88,640/- [(5400 x 12 x 16) + (40% future prospects) – (1/4th 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.11,58,640/- and compensation assessed by the Tribunal is reduced to the extent of Rs.7,13,768/- (18,72,408 - 11,58,640). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeals stand disposed of in the aforesaid terms. As the appeal (FAO No.7661 of 2015) has been disposed of, application for condonation of delay is of academic relevance.

06.03.2020

ashok

Whether speaking/reasoned:
Whether reportable:

(REKHA MITTAL)

JUDGE

Yes / No
Yes / No