

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

220

FAO-6105-2015 (O&M)

Date of decision: 11.02.2020

MAGMA HDI GENERAL INSURANCE CO LTD ... Appellant

Versus

SUNITA AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate for the appellant.
Mr. NK Vadhera, Advocate for respondent No.1.
Mr. Ashwani Arora, Advocate/amicus curiae
for respondents No.2 to 4.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 19.05.2015 passed by the Motor Accidents Claims Tribunal, Gurdaspur whereby compensation has been assessed on account of death of Sukhwinder Singh in a motor vehicular accident that took place on 11.10.2013.

The Tribunal awarded Rs.9,14,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.6000/-
Multiplier	16
Deduction for personal expenses	1/4 th
Loss of dependency	Rs.8,64,000/-
Expenses on funeral and loss of love and affection	Rs.50,000/-

Counsel for the appellant insurance company would argue that though FIR attributing negligence to driver of truck bearing No.GJ-17-Y-9002 was lodged at the behest of Ranjit Singh, driver of truck bearing No.PB-06-M-8737 in which deceased Sukhwinder Singh was travelling but on due investigation, Ranjit Singh has been indicted in criminal proceedings and admittedly, he faced trial for causing the accident. It is argued that in view of investigation made by the police and presentation of challan against Ranjit Singh, his testimony cannot form the basis for determining issue No.1 in favour of the claimants-respondents. It is further argued that even if the appellant-insurance company is held liable to pay compensation to the claimants, it should be left at liberty to recover the same from the owner and

insurer of aforesaid truck No.PB-06-M-8737.

Counsel representing the claimants, on the contrary, would argue that additional compensation may be allowed by extending benefit of future prospects and adequate compensation under conventional heads.

Be that as it may, it is undisputed position of the case that owner of alleged offending truck registered in the State of Gujarat had not contested the proceedings before the Tribunal and opted to be ex parte. Even particulars of driver of offending vehicle were not brought on record as the same were to be supplied by owner of the vehicle. There is no rebuttal to testimony of Ranjit Singh, driver of truck No.PB-06-M-8737 in which deceased Sukhwinder Singh was travelling with apples loaded from Kashmir for its destination to Mumbai. Except the fact that Ranjit Singh admitted that he is facing criminal trial pending in the State of Gujarat, no such fact has been elicited in his cross examination that his testimony is not worthy of credence or reliance. In the given circumstances, it is difficult to accept contention of the insurance company that findings recorded by the Tribunal determining issue No.1 in favour of the claimants and against respondents therein suffer from any factual or legal flaw that would call for intervention. As such, the insurance company cannot assert that liberty may be granted to recover compensation from owner and insurer of truck No.PB-06-M-8737 after payment of compensation to the claimants.

This brings the Court to quantum of compensation assessed. Claimants shall be entitle to addition in income for future prospects @ 40%. Other criteria adopted by the Tribunal for computing loss of dependency is correct and affirmed. In this manner, loss of dependency is calculated at Rs.12,09,600/- [(6000 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.12,79,600/- and additional amount is

Rs.3,65,600/- (12,79,600 - 9,14,000), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal stands disposed of in the aforesaid terms.

11.02.2020

(REKHA MITTAL)
JUDGE

ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No