

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

Date of decision: 03.02.2020

FAO No.886 of 2016 (O&M)

New India Assurance Co. Ltd.

... Appellant

Versus

Smt. Rekha Kumari and ors.

... Respondents

FAO No.4886 of 2016 (O&M)

Smt. Rekha Kumari and ors.

... Appellants

Versus

Alam and ors.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod Gupta, Advocate for insurance company.

Mr. JS Khattar, Advocate for
Mr. Pankaj Bali, Advocate for claimants.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.886 and 4886 of 2016 as these have emerged out of the same award dated 03.09.2015 passed by the Motor Accidents Claims Tribunal, Palwal whereby compensation has been assessed on account of death of Arun Kumar in a motor vehicular accident that took place on 16.06.2014.

FAO No.886 of 2016 has been filed by New India Assurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeal has been preferred 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 quantum of compensation.

CM No.2458-CII of 2016 in FAO No.886 of 2016

Heard.

Allowed as prayed for. Delay of 40 days in filing the appeal stands condoned.

Main Cases

The Tribunal awarded Rs.30,87,400/-, detailed hereunder:-

Monthly income of the deceased	Rs.19,800/-
Multiplier	17
Deduction for personal expenses	1/4 th
Loss of dependency	Rs.30,29,400/-
Expenses on funeral	Rs.10,000/-
Loss of estate	Rs.5000/-
Loss of consortium	Rs.20,000/-
Medical expenses	Rs.23,000/-

Counsel for the insurance company would argue that in FIR registered with regard to the occurrence, driver was stated to be Saddam son of Asif but Alam son of Sabbir has been impleaded as driver in the claim application. It is argued that name of the driver has been changed to cause loss to the insurance company in respect of its plea that driver did not have a valid licence and insurance company is entitle to have right of recovery against the insured.

With regard to quantum of compensation, it is argued that Tribunal has wrongly assessed income of the deceased at Rs.19,800/-

without any cogent and convincing evidence adduced by the claimants.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1 upholding their plea that accident was caused due to rash and negligent driving of Alam son of Sabbir. He has prayed that additional compensation may be allowed by extending benefit of future prospects and adequate compensation under conventional heads.

FIR No.265 dated 16.06.2014 was registered on the day of accident. Claimants examined Mahesh Kumar PW3, an eye-witness to the occurrence and author of FIR to substantiate their plea with regard to rash and negligent driving of offending vehicle and unfortunate death of Arun Kumar in the accident. Counsel for the insurance company has failed to point out any materials elicited in cross examination of Mahesh Kumar PW3 with regard to his explanation regarding name of the driver in the FIR and his testimony on oath before the Tribunal. On due investigation of FIR, challan was presented against Alam respondent No.1 therein. The insurance company has failed to adduce any evidence to establish identity of Saddam son of Asif or that he was ever employed as driver on the vehicle in question. In the given circumstances, I do not find any reason to interfere in findings of the Tribunal on issue No.1 and the same are affirmed.

With regard to quantum of compensation, counsel for the parties are *ad idem* that findings of the Tribunal on issue No.2 may be set aside and the matter be remitted to the Tribunal for assessment of

compensation afresh on the basis of materials already on record and evidence of an authorised representative of M/s YRD Industries, Faridabad along with all relevant records proving employment and income of the deceased and evidence in rebuttal, if any, to be adduced by the insurance company.

In view of the above, the appeals stand disposed of. Findings of the Tribunal only on issue No.2 in respect of quantum of compensation are set aside and the matter is remitted to the Tribunal for making assessment afresh, in view of observations made hereinbefore. Parties through their counsel are directed to appear before the Tribunal on 27.02.2020. The Tribunal shall complete assessment of compensation afresh within a period of three months of the parties putting in appearance. The Tribunal would not bother the driver and owner of offending vehicle for the purpose of assessment of compensation. As the appeal (FAO No.4886 of 2016) has been disposed of, application for condonation of delay is of academic relevance.

03.02.2020

ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No

(REKHA MITTAL)
JUDGE