

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

FAO No.1732 of 2018 (O&M)

Date of decision: 14.01.2020

Oriental Insurance Co. Ltd.

... Appellant

Versus

Parmila Dalal and others

... Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. JS Chatrath, Advocate for the appellant.  
Mr. Surinder Gaur, Advocate for respondents No.1 to 3.  
Mr. Sanjay Kumar, Advocate for respondents No.4 and 5.  
Mr. Deepak Thapar, Advocate for respondents No.6 and 7.  
Mr. Gaurav Gupta, Advocate for  
Mr. GD Gupta, Advocate for respondent No.8.

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**REKHA MITTAL, J. (Oral)**

Challenge in the present appeal has been directed against award dated 01.11.2017 passed by the Motor Accidents Claims Tribunal, Rohtak whereby compensation has been assessed on account of death of Devender Singh in a motor vehicular accident that took place on 21.10.2016.

Counsel for the appellant would inform that appeal has been filed to assail findings of the Tribunal on issue No.1 and quantum of compensation. It is argued that in view of the facts elicited in cross-examination Amit Kumar PW-3, examined by the claimants to discharge onus of issue No.1 with regard to rash and negligent driving of offending vehicle, the present is a case of composite negligence of both the vehicles

involved in the occurrence namely canter No.UA-08-H-7509 driven by Mohammad Hashim and scorpio car No.HR-12-AB-6748 driven by Jai Singh Lamba in which Devender Singh (since deceased) and Amit Kumar were travelling on the ill-fated day.

With regard to quantum of compensation, it is argued that Tribunal has wrongly allowed addition of future prospects @ of 30% as against 25% admissible in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. Compensation allowed under conventional heads may be restricted to Rs.70,000/- in the light of **Pranay Sethi and others's case (supra)**.

Counsel representing the claimants as well as insurer of scorpio car have supported findings of the Tribunal attributing exclusive negligence to Mohammad Hashim, driver of aforesaid canter.

Counsel representing driver of canter has echoed the arguments advanced by counsel for the insurance company (New India Assurance Co. Ltd.).

Counsel representing the claimants has supported allowing of addition in income for future prospects @ 30% with the submission that deceased was a regular employee of Sarv Haryana Gramin Bank, proved by Satyavir Singh PW-2.

As per case set up by the claimants, on 21.10.2016 at about 9 p.m., Devender Singh along with friends Jai Singh Lamba and Amit was

returning from village Kakroi, District Sonapat in scorio aforesaid driven by Jai Singh Lamba at a moderate speed. When they reached near village Jharot, canter aforesaid driven by respondent No. 1 (therein) in a rash and negligent manner and at a high speed was going ahead of scorio vehicle. Jai Singh Lamba gave horn and dipper repeatedly for getting a side from the canter but driver of the canter did not give side and all of a sudden stopped his canter by applying brakes. Jai Singh Lamba applied brakes of his scorio but the scorio struck behind the canter and occupants of the car received injuries.

The claimants examined Amit Kumar PW-3 to substantiate plea of the claimants that accident is the result of rash and negligent driving of offending vehicle. He tendered into evidence his affidavit Ex.PW3/A. In para 2 of the affidavit, he reiterated the version brought-forth by the claimants. He also deposed that scorio struck despite best efforts made by its driver because of negligence of driver of canter. In cross-examination, he had stated that front side of his vehicle got damaged upto half of the front glass. The scorio collided on the right middle back side of the canter. In further cross-examination, he had deposed that driver of scorio gave indication for side to the canter moving ahead and indicator and horn were given for a span of about 4-5 minutes for taking a side.

The driver of canter did not appear in the witness box to counter testimony of Amit Kumar that driver of scorio wanted to overtake the canter and had given indicator and blew horn for 4-5 minutes for taking

a side. There is also no challenge to testimony of Amit Kumar that canter driver in place of giving passage to the driver of scorpio car to take over suddenly applied brakes, resulting in hitting of car behind the canter. Since the driver of scorpio car wanted to overtake the canter moving ahead, he was required to decrease the gap between canter going ahead and scorpio car because only then he could overtake the canter. Amit Kumar had categorically stated that driver of scorpio car applied brakes to avoid collision but could not help. In the given circumstances, it is difficult to accept contention of the appellant that there was lack of reasonable care on the part of driver of scorpio car and for that reason, he can be held negligent to any extent. In this view of the matter, findings of the Tribunal answering issue No.1 in favour of the claimants and against driver, owner and insurer of aforesaid canter cannot be faulted with.

This brings the Court to compensation assessed by the Tribunal. The deceased was born in the year 1974 and he was Assistant Manager in Sarv Haryana Gramin Bank. He got promotion in the year 2013. As per testimony of Satyvir Singh, the deceased would have got three more promotions had he remained alive. All these facts go a long way to show that deceased was a regular employee of the bank. The Tribunal has rightly extended benefit of future prospects @ of 30%. No arguments have been advanced to assail findings of the Tribunal with regard to other criteria adopted for assessing loss of dependency. However, compensation allowed under conventional heads is modified to the effect that claimants

shall be entitle to Rs.70,000/-. Accordingly, compensation assessed by the Tribunal is reduced to the extent of Rs.80,000/-. The insurance company (Oriental Insurance Co. Ltd.) shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

14.01.2020  
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**(REKHA MITTAL)**  
**JUDGE**

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