

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

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**FAO No.5542 of 2010 and
X-Objections No.11-CII of 2011
Date of Decision: 23.12.2022**

National Insurance Company Limited

.....Appellant

Versus

Abha and others

.....Respondents

BEFORE: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Suvir Dewan, Advocate
for the appellant-Insurance Company.

Ms. Ekta Thakur, Advocate
for respondents No.1 and 2-claimants/cross-objectors.

Service of notice upon respondent No.3
dispensed with vide order dated 18.11.2022.

Mr. Vimal Kumar Gupta, Advocate
for respondent No.4.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved and dis-satisfied with the Award passed by learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') on 08.05.2010, whereby respondents No.1 and 2-claimants/cross-objectors (here-in-after to be referred as 'the claimants') have been awarded compensation to the tune of Rs.2,40,000/-, along-with interest @ 7.5% per annum from the date of filing of the claim petition till its realization, on account of the death of their daughter named Amiti in a

motor vehicular accident, the appellant-Insurance Company (here-in-after to be referred as 'the insurance company') has preferred the instant appeal for seeking the reduction in the amount of compensation.

2. Shorn and short of unnecessary details, the facts leading to the filing of the present appeal, are that the claimants filed a petition under Section 163-A of the Motor Vehicles Act, for claiming compensation of Rs.10 (ten) lac from respondent No.3-driver, respondent No.4-owner and the appellant-insurer (arrayed as respondents No.1 to 3 respectively in the petition) of the Truck bearing registration No.HR-37-3700, while averring that on 29.10.2005, their above-named daughter, who was aged about 18 years, was pillion-riding on the Scooter bearing registration No.HR-03-B-6683 and was going towards Sectors 16-17 at Panchkula. In the meantime, the afore-said Truck, which was being driven by the respondent-driver, came from Sector 15 side and it hit the back side of the Scooter and their daughter sustained grievous injuries in this accident which, ultimately, proved fatal for her.

3. Respondents No. 1 & 2 in the petition, i.e the driver and owner of the said Truck, filed their joint written statement whereas the appellant-Insurance Company filed its separate written-statement, contesting the claim set-forth by the claimants in their petition, on various grounds. The Tribunal put the parties to the trial by framing the issues on 08.09.2006. After appreciating and evaluating the evidence as led by the parties on the record and hearing their counsel, the Tribunal partly allowed the claim petition vide the impugned Award, while granting the compensation to the

claimants, as already indicated in the opening para of this judgment and holding all the respondents in the petition to be jointly and severally liable to pay the same.

4. It is pertinent to mention here that the service of notice upon respondent No.3-driver in the instant appeal, has been dispensed with vide the order dated 18.11.2022.

5. It is again worth-while to point it out here that the claimants have also preferred the Cross-Objections in the present appeal for seeking the enhancement of the amount of compensation, as awarded to them vide the impugned Award.

6. I have heard learned counsel for the appellant-Insurance Company as well as learned counsel for respondents No.1 and 2-claimants/cross-objectors and learned counsel for respondent No.4-owner in this appeal and on the Cross-Objections as well and have also gone through the file carefully.

7. Learned counsel for the appellant-Insurance Company has contended that the Tribunal has assessed the notional annual income of the deceased as Rs.15,000/- and has applied the multiplier of '16' for working out the amount of compensation but it has not made any deduction from the above-said notional income of the deceased towards her personal expenses, before calculating the said amount and in these circumstances, it becomes explicit that the amount of compensation, as awarded by the Tribunal to the claimants, is highly excessive/exorbitant and therefore, the same deserves to be reduced/modified accordingly.

8. Per contra, learned counsel for the claimants/cross-objectors has argued that the notional income of the deceased, as assessed by the Tribunal is on the lower side and therefore, the same should be increased in view of the ever rising rate of inflation and consequently, the amount of compensation be also enhanced. To buttress her argument, she has placed reliance upon the verdict rendered by Hon'ble Supreme Court in **Kurvan Ansari @ Kurvan Ali and another Vs. Shyam Kishore Murmu and another 2022(1) RCR (Civil) 165** to the effect that “*where a claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 for seeking compensation on account of the death of a child, aged seven years and not an earning member, the fixing of notional income at Rs.15,000/- per annum was not just and reasonable and it was a fit case to increase the notional income by taking into account the inflation, devaluation of rupee and cost of living and the notional income of the deceased was to be assessed at Rs.25,000/- per annum*”.

9. The afore-cited observations are fully applicable to the instant appeal and in the light of the same, the notional income of the deceased is assessed at Rs.25,000/- per annum and without making any deduction from the same towards her personal expenses and by applying the multiplier of ‘16’ in view of the factum of her age being 18 years at the time of the said accident, the amount of compensation is calculated to be (Rs.25,000x16)= Rs.4,00,000/-. Besides this amount, the claimants shall be entitled to the compensation @ Rs.40,000/- each towards the loss of filial consortium and Rs.15,000/- for the funeral expenses.

10. Resultantly, the enhanced amount of compensation, as would be payable to the claimants, is worked out as under:-

Head	Amount
Compensation	Rs.25,000/-x16= Rs.4,00,000/-
Filial Consortium	Rs.80,000/- (Rs.40,000/- each)
Funeral Expenses	Rs.15,000/-
Total compensation to be paid	Rs.4,95,000/-
Compensation already awarded	Rs.2,40,000/-
Net Enhanced amount	Rs.2,55,000/-

10. As a sequel to the fore-going discussion, the appeal preferred by the Insurance Company is dismissed and the Cross-Objections filed by the claimants are hereby allowed to the effect that they (claimants) are entitled to the net enhanced compensation amounting to **Rs.2,55,000/-**, over and above the amount of Rs.2,40,000/-, as already awarded to them by the Tribunal and the said enhanced amount shall carry the interest @ 7.5% per annum from the date of the filing of the claim petition till its realization and shall be payable to the claimants in the same terms as mentioned in the impugned Award.

(MEENAKSHI I. MEHTA)
JUDGE

December 23, 2022
pooja

Whether speaking/reasoned: Yes
Whether Reportable: Yes