

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

FAO No. 7270 of 2016

DATE OF DECISION :- December 21, 2022

Rajvir Kaur and others

...Appellants

Versus

Abdul Khan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Munish Bhardwaj, Advocate for the appellants.

Mr. D.K. Sihag, Advocate for respondents No. 1 and 2.

Mr. Pardeep Goyal, Advocate
for respondent No. 6-The New India Assurance Company Ltd.

Briefly stated the facts of the case are that on 5.12.2012 Devinder Singh (deceased) was coming from village Jatana Ucha on his motorcycle bearing registration number PB65-D-1573 driving it at normal speed. At about 8.45 A.M, when he reached near a Dhaba close to Baba Mast Ram turning, then a closed body truck bearing Registration No. PB-65G-4230 being driven in a rash and negligent manner by respondent No. 1 Abdul Khan came from opposite side i.e. from the side of Khamano and by going on wrong side it struck against the motorcycle of Devinder Singh and thereafter an Indigo Car bearing Registration No. PB-01-1921 also being driven in a rash and negligent manner by respondent No. 4 Kuwant Singh came from behind the truck and dragged Devinder Singh along with his motorcycle towards Samrala side. On account of suffering injuries in the mishap Devinder Singh expired at the spot. The accident had been witnessed by Balamjeet Singh and Joga Singh, who were standing in the Dhaba near place of occurrence. After the accident respondent No. 1 Abdul Khan had alighted from the offending truck and disclosed his particulars whereas respondent No. 4 Kulwant Singh driver of the offending Indigo Car fled from the spot leaving the Car behind.

Respondent No. 1 Abdul Khan on observing that many people had started gathering at the place of accident also slipped away. Formal F.I.R No. 141 dated 5.12.2012 for offences under Section 279, 427, 304A IPC was registered at Police Station Khamano. Post Mortem examination on dead body of Devinder Singh was conducted at Civil Hospital, Khamano on 5.12.2012.

Legal representatives of the deceased namely his wife Rajvir Kaur, aged about 27 years, minor son Indervir Singh Kler and mother Smt. Jaswinder Kaur, aged about 59 years had brought a claim petition against Abdul Khan, driver, Makhni Sounds, owner and IFFCO-TOKIO General Insurance Company Ltd., insurer of the offending truck as well as Kulwant Singh, driver, Mandeep Singh, owner and The New India Assurance Company Ltd., Chandigarh, insurer of Indigo Car contending that deceased was aged about 28 years, enjoying good health and earning Rs.50,000/- per month from avocation of agriculture and dairy farming; the claimants were dependent upon his income.

Notice of the claim petition was given to the respondents, who put in appearance and filed written replies contesting the claim petition. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, Motor Accident Claims Tribunal, Fatehgarh Sahib vide Award dated 14.10.2015 accepted the claim petition and awarded compensation of RS.9,41,000/- to the claimants payable by the respondents jointly and severally i.e. by respondents No. 1 to 3 to the extent of 50% and remaining by respondents No. 4 to 6.

Feeling aggrieved by the amount of compensation awarded, the claimants have filed an appeal before this Court seeking enhancement of compensation.

Respondent No. 3 IFFCO-TOKIO General Insurance Company Ltd. has put in appearance through Sh. Punit Jain, Advocate.

I have heard learned counsel for the parties and gone through the

record.

Learned counsel for the appellants has confined his prayer for addition of future prospects to the income of deceased in terms of judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' and "*Magma General Insurance Co. Ltd. Versus Nanu Ram Alias Chuhru Ram and Others 2018(4) R.C.R. (Civil) 333*".

Learned counsel representing respondent No. 3 IFFCO-TOKIO General Insurance Company Ltd. as well as respondent No. 6 The New India Assurance Company Ltd. in all fairness have stated that as per the settled legal position some addition on account of future prospects is required to be made to the income of the deceased.

In this case the Motor Accident Claims Tribunal, Fatehgarh Sahib on analysis of the facts and considering the other facts and circumstances had taken the income of deceased to be Rs.6000/- only. The deceased was aged about 28 years, as such 40% of that amount is to be added towards future prospects. In that way the monthly income of deceased comes out to Rs.8400/-. Deducting 1/3rd of the amount towards personal and living expensed the dependency comes out to Rs.5600/- per month. The annual dependency comes out to 5600x 12=Rs.67,200/-. Multiplier of 17 has been rightly applied. Therefore, total dependency comes out to 67,200 x 17=Rs.11,42,000/-. The claimants are entitled to get Rs.1,20,000/- under the Head loss of consortium, Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of Estate. The total amount comes out to be Rs.12,92,000/-. The Tribunal has granted compensation of Rs.9,41,000/-. In that way the same is enhanced by Rs.3,51,000/- (12,92,400 - 9,41,000). The additional

compensation of Rs.3,51,000/-/- is granted to the claimants payable with interest at the rate of 7.5% per annum from the date of filing of claim petition till actual realization. The apportionment of the compensation and other terms and conditions shall remain the same as directed by the Tribunal in the Award. The share of appellant claimant No. 2 Indervir Singh Kaler, who is a minor be kept in the form of FDR with some nationalized Bank payable to him on attaining majority in terms of directions issued by Motor Accident Claims Tribunal, Fatehgarh Sahib in the impugned Award itself.

The appeal is allowed partly with costs.

(H.S. MADAAN)
JUDGE

December 21, 2022
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No