

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

(1) FAO-3483-2016 (O&M)
Date of Pronouncement: 03.03.2023

Smt. Jyoti and others

...Appellants

Versus

Mukesh Kumar and others

...Respondents

(2) FAO-4455-2016 (O&M)

New India Assurance Company Ltd.

...Appellant

Versus

Jyoti and others

...Respondents

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

Present: Mr. Sumit Sangwan, Advocate for the appellants
in FAO-3483-2016 and for respondents
in FAO-4455-2016.

Mr. RC Gupta, Advocate for the appellant
in FAO-4455-2016 and for respondent No.3
in FAO-3483-2016.

H.S. MADAAN, J.

Smt. Jyoti, widow aged 29 years, Bhavishya, minor son aged about 01 year and Santosh Devi, aged 55 years mother of Suresh Kumar, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') against respondents i.e. Mukesh Kumar-driver, Naveen Kumar owner and

New India Assurance Company Ltd., New Delhi-insurer of car bearing registration No.RJ-14CL-1199 (for brevity 'offending car') claiming compensation.

2. As per case of petitioners/claimants, on 05.11.2013, Suresh Kumar was returning on a motorcycle to his village Dalanwas from Satnali, at about 9.00 pm, when he reached near Balvada hospital, Satnali in the meanwhile, the offending car being driven by respondent No.1 Mukesh Kumar in a rash and negligent manner came from opposite side and hit motorcycle of Suresh Kumar, as a result of which he fell down and suffered injuries. The accident was witnessed by Sukhbir son of Ram Chander and Anil son of Deshraj. Suresh Kumar was taken to General Hospital, Mahendargarh for treatment but after giving first aid, he was referred to RR Hospital, Delhi where he remained admitted from 06.11.2013 to 09.11.2013 but on 09.11.2013, he expired on account of injuries suffered by him in the accident. The matter was reported to the police and FIR No.193 dated 09.11.2013, for offences under Sections 279, 337 and 304-A IPC was registered at Police Station Satnali. The claimants have thus brought the claim petition contending that deceased was aged about 30 years at the time of accident. He was serving in Indian Army, getting Rs.31,000/- per month as salary.

3. On getting notice, the respondents appeared and contested the claim petition. Respondents No.1 and 2 filed a joint written statement denying the allegations in the claim petition stating that a false FIR has been got registered by the claimants in connivance with the police. The

car in question was duly insured with respondent No.3-insurance company.

4. Respondent No.3-insurance company in a separate written statement filed by it alleged that respondents No.1 & 2 had violated the terms and conditions of the insurance policy and had plied the vehicle which was over loaded for carriage passenger without permit and fitness. Such respondent also prayed for dismissal of the claim petition.

5. From the pleadings of the parties, following issues were framed by the tribunal:-

1. Whether Suresh Kumar succumbed to the injuries in a road side accident which took place on 05.11.2013 at about 9:00 PM in the area of Satnali due to rash and negligent driving of Car no.RJ-14-CL-1199? OPP
2. To what amount of compensation, if any, and from whom the claimant is entitled? OPP
3. Whether the vehicle in question was being driven by respondent No. 1 in violation of terms and conditions of insurance policy? OPR
4. Relief.

6. The parties were afforded adequate opportunities to lead evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Narnaul (for short 'the Tribunal') gave issue-wise findings and vide award dated 17.12.2015, awarded compensation of Rs.43,50,896/-; to the claimants along with interest @ 9% p.a from the date of filing of claim petition till actual realization. The liability to pay this amount being joint and several.

7. Feeling aggrieved by such award passed by the Tribunal, the insurance company has approached this Court by way of filing an appeal, notice of which was given to the respondents/claimants who have put in appearance through counsel to offer a contest.

8. The claimants on their part have filed separate appeal, notice of which was given to the respondent-insurance company and that has also appeared.

9. I have heard learned counsel for the parties besides going through the record.

10. The main thrust of the arguments by learned counsel for the appellant-insurance company was that on account of death of deceased, the claimants had received monetary benefits which are required to be deducted from the compensation payable, whereas, this contention is opposed by learned counsel for the claimants.

11. However, a perusal of the award goes to show that the tribunal has taken into view all these factors including calculating the notional age of deceased then assessing his monthly income. There is a detailed discussion in the award in paras No.20 to 25, which for ready reference is being reproduced as under:-

“20. Both these issues are inter-connected. Hence are taken up together for discussion. It is pertinent to mention that discussion of remaining evidence is necessary for reaching to the conclusion about income capacity of the deceased, his family responsibility, his age at the time of death etc. as well as regarding responsibility, if any of the respondents. It is noticed by this tribunal that PW1, one of the claimants appeared as a witness and deposed through affidavit Ex.PW1/A. The witness

in her affidavit deposed the fact that she is legally wedded wife of the deceased namely Suresh Kumar and the deceased left behind his son and mother (petitioners no.2 and 3) impleaded in the present case as claimants including the deponent witness. It is also deposed by this witness that at the time of death of Suresh Kumar, he was posted as Sepoy in Indian Army and was getting Rs.31,000/- per month as salary. That deponent and other claimants were fully dependent upon the earnings of the deponent's husband and due to untimely death of the deceased the deponent and other claimants have been deprived from love and affection and earnings and they are also feeling mental agony and pain. Deponent and other claimants have no other source of income.

21. PW4 ALD Parveen Kardikar INDEP ARMD SQN has deposed that he has brought the summoned record regarding salary of deceased Suresh Kumar and as per record he was getting salary of Rs.30,480/- per month and proved the salary certificate Ex.PW4/A. A bare perusal of Ex.PW4/A (monthly pay slip pertaining to the month of November, 2013) it is revealed that the deceased was getting Rs.30,480/-. Thus, this tribunal is of the view that the petitioners have been able to prove the monthly income of the deceased as Rs.30,480/-. The age of the deceased was 31 years at the time of accident as clear from Ex.PW4/A. As per Rule 5 of Haryana Government Gaz. (Extra), August 2006 the family members of deceased are entitled to get full last drawn salary along with other allowances for 15 years from the date of death of the deceased under Compassionate Assistance Policy and therefore the law laid down by Hon'ble Apex Court in Bhakra Dass Management Board Versus Kanta Aggarwal and others 2008 AIR (SC) 3118, Oriental Insurance Company Limited Versus Saroj Devi & others 2013 (1) ACC 754 which has also been followed by Hon'ble High Court of Chhattisgarh in case titled Smt. Kiran Khandey Versus Manish Srivastav 2012 (2) RCR (Civil) 251 (DB), is to be considered by this Tribunal at the time of

adjudicating the compensation amount. Even Hon'ble High Court of Punjab & Haryana in Oriental Insurance Company Limited (Supra) observed that in a case where the deceased family getting full salary alongwith allowances for certain period under Compassionate Assistance Policy the calculation is to be made in two steps and the observation as made by Hon'ble High Court is reproduced which reads as under:-

“The reworking of the calculation will involve two steps but with modifications. In the first step, notional age of the deceased will be worked out by adding the actual age of the deceased with the number of years for which his family would be getting last drawn salary. In the second step, the notional age so arrived at will be made the basis for working out the assessed salary (dependency) and multiplier, as per the law laid down in Sarla Verma Versus Delhi Transport Corporation (Supra).”

22. Thus for calculating the compensation amount this Tribunal has to consider the notional age of the deceased. The notional age of deceased in the present case is 46 years (actual age of the deceased i.e. 31 years + number of years of full last drawn salary as per rules of Compassionate Assistance Policy i.e. 15 years).

23. It is further that in view of notional age while assessing monthly income 30% addition should be made to the monthly income on the ground of future prospect and accordingly the monthly income of the deceased-Suresh Kumar is assessed Rs.39,624/- (Rs.30,480/-+ 9144/-).

24. It is necessary to point out here that in the petition three family members were dependent upon income of deceased including (the wife of the deceased). Thus the number of family members as dependent upon income of deceased can be considered as 3. This much fact could not be controverted with respondent evidence. Keeping in view the law as laid down in Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR civil 77 as in the present case number of dependent-family members are 3

deduction should be 1/3rd of monthly income of the deceased. The monthly income of deceased was Rs.39,624/- per month. So after deducting 1/3rd of monthly income i.e. Rs.13,208/- the remaining amount would be Rs.26,416/-. Thus annual dependency would be Rs.26,416x12= Rs. 3,16,992/-.

25. In view of the discussion already held as per notional age of the deceased i.e. 46 years. As per Sarla Verma (supra) the appropriate multiplier provided for the age group of 46 to 50 years is 13. Thus after applying multiplier of 13 total loss of dependency of the petitioners would be Rs.41,20,896/- (3,16,992x13). The petitioner No.1 Smt.Jyoti Devi would also be entitled to additional sum of Rs.1,00,000/- for loss of consortium and all the petitioners would further be entitled to Rs.25,000/- towards performance of last rites and Rs.5,000/- under the head of loss of estate. In view of settled law laid down in the case Vimal Kanwar Vs. Kishore Dan and others 2013 (2) RCR (Civil) 945 this Tribunal also considers it appropriate to grant petitioners No.2 and 3 Rs.50,000/- each for loss of love and affection. In this manner the petitioners would be entitled to total compensation of Rs.43,50,896/-.”

12. Addition towards future prospects has also been made. The deduction has also been rightly made to the extent of 1/3rd. The compensation awarded is just fair and reasonable.

13. I do not see any reason for enhancement or reduction of the compensation. Both the appeals are found to be without merit and are dismissed accordingly.

03.03.2023
sumit.k

(H.S. MADAAN)
JUDGE

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