

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 2393/2017

Date of decision:21/02/2023

The New India Assurance Company Limited

.....Appellant

Vs.

Vijay Kumari and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Suvir Dewan, Advocate for the appellant.
 Mr. Dheeraj Narula, Advocate for respondent no.1.
 Mr. Prashant Bansal, Advocate for respondents 2 and 3.

Nidhi Gupta, J.

Present appeal has been filed by the Insurance Company against the Award dated 25.10.2016 passed by Motor Accident Claims Tribunal, Mohali (hereinafter referred to as 'the Tribunal') in claim petition bearing MACP/00046/2016 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Appellant and respondents 2 and 3 herein, were held jointly and severally liable to pay the compensation amount of Rs. 16,70,000/- with interest @ 6% per annum from the date of filing of the petition till actual realization.

Brief facts of the case are that the Ld. Tribunal on the basis of pleadings and evidence before it concluded that deceased Gaganpreet @ Gagandeep Singh had died due to the injury suffered by him in a motor vehicular accident that took place on 21.11.2015, due to the rash and negligent driving of bus bearing registration NO. PB-11-Q-4513 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.2, and owned by respondent no.3 herein. Sole Claimant/respondent No. 1 herein, is the mother of the deceased, who was 15 years old at the time of his death.

Ld. Counsel for the appellant Insurance Company assails the impugned Award primarily on the ground that the notional income of the deceased has been taken as Rs.10,000/- per month without there being any proof of the same. It is submitted that 50% of this income has been added towards future prospects whereas, keeping in view the undisputed age of the deceased, future prospects @ 40% should have been added. It is further submitted that even amounts of Rs.25,000/- each granted on account of loss of estate, and funeral expenses, are also on higher side.

No other argument has been advanced on behalf of the appellant.

Learned counsel for the respondent-claimant submits that nothing has been granted towards consortium to the claimant who is mother of the deceased.

Heard ld. Counsel for the parties.

I find merit in the submissions made on behalf of the learned counsel for the appellant. In accordance with law laid down by Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma vs. Delhi Transport**

Corporation (2009) AIR (SC) 3104; and National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680, addition of 40% should have been made towards future prospects; and even amount of Rs.25000/- each towards loss of estate and funeral expenses is also on higher side. As this is not an appeal filed by the claimant/respondent no.1, claim made on her behalf regarding filial consortium cannot be entertained. It is also to be noted that the learned Tribunal, while assessing income of the deceased as Rs. 10,000/-, has relied upon judgement of the Hon’ble Supreme Court in **V. Mekala Vs M. Malathi and another, 2014 STPL (Web) 339 SC**, and this Court in case of **Priyanka Bhutani vs Sukh Pal Singh and others FAO 4202 of 2006**, wherein in similar circumstances, where the deceased was a student, notional income has been assessed as Rs.10,000/- per month.

In view of the above discussion, compensation admissible to the claimant/respondent no.1 is reworked as follows: -

S.No.	Head	Amount (In Rupees)
1	Notional income	10000
2	40% towards future prospects	4000
3	Total monthly notional income	14000
4	50% deduction	7000
5	Monthly dependency	7000
6	Annual dependency	84000
7	Multiplier	18
8	Loss of dependency	15,12,000
9	Loss of estate	16,500
10	Funeral expenses	16,500
11	Filial consortium	44,000
12	Total compensation	15,89,000
13	Compensation awarded by Tribunal	16,70,000
14	Compensation in excess	81,000

15	Interest	@ 6% per annum from the date of filing of claim petition till realization.
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Vide order dated 18.4.2017 this Court while issuing notice of motion had stayed recovery of amount of compensation beyond Rs.8.5 lacs. Accordingly, it is directed that remaining amount of compensation as calculated above be released to the claimant/respondent no.1 within two months from today along with interest @ 6% per annum on modified compensation.

Disposed of as above.

21/02/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No