

CM-24930-CII-2017 ;
CM-24929-CII-2017 in/and
FAO-7545-2017

2023:PHHC:078414

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(223/5)

CM-24930-CII-2017 ;
CM-24929-CII-2017 in/and
FAO-7545-2017
Date of Decision : 19.05.2023

Aryan

...Appellant

Versus

Sushil Kumar and others

...Respondents

(223/6)

FAO-8482-2017 (O&M)

Cholamandlam MS General Insurance Company Limited

...Appellant

Versus

Master Aryan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Hooda, Advocate for the appellant
in FAO-7545-2017.

Mr. Puneet Jain, Advocate for the appellant
in FAO-8482-2017.

Mr. Aakash Juneja, Advocate for respondent No. 3
in FAO-8482-2017.

Harsimran Singh Sethi J. (Oral)

CM-24930-CII-2017 in FAO-7545-2017

Present application has been filed seeking condonation of delay of 31 days in filing the appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed and delay of 31 days in filing the appeal is condoned.

CM-27611-CII-2017 in FAO-8482-2017, CM-24929-CII-2017 in FAO-7545-2017

Applications are allowed, as prayed for.

FAO-7545-2017 and FAO-8482-2017

1. By this common order, two FAOs, which relates to the same claimants and arise out of the same Award, are being decided.
2. Learned counsel for the appellant-Insurance Company in FAO No. 8482 of 2017 submits that an accident took place on 30.06.2014 in which Sumit Kumar, his wife Rashmi Kiran and their daughter Lakshita lost their lives while they were traveling in Scorpio vehicle having Registration No. HR-15AS-1926. Learned counsel further submits that in the present case, while fixing the liability, the Tribunal has ignored the fact that Scorpio had hit the offending vehicle i.e. Truck bearing Registration No. UP-15AT-5761 from behind, hence, the compensation awarded by the Tribunal treating the Truck to be an offending vehicle is not correct interpretation of the facts and circumstances of the present case.
3. On being asked, as to whether, the driver of the offending

vehicle i.e. Truck is being proceeded against in a criminal court of law for negligent and rash driving, learned counsel for the Insurance Company was not able to rebut the said fact that an FIR has been registered against the driver of the Truck and after investigation, challan has been put against the driver of the offending Truck for being negligent as well as that of rash driving, which led to the death of Sumit Kumar, Rashmi Kiran and Lakshita.

4. That being so, it cannot be said that the occupants of the Scorpio vehicle were negligent so as to absolve the Insurance Company of their liability. No perversity in the findings of the Tribunal have been pointed out to this Court by the learned counsel for the appellant so as to need any intervention by this Court in these appeals

5. No other point was raised.

6. Keeping in view the above, no interference is called for by this Court for any modification of the Award of the Tribunal.

7. FAO No. 8482 of 2017 is dismissed.

8. As far as the claim raised by the claimants in FAO No. 7545 of 2017 for enhancement of compensation is concerned, learned counsel for the appellant submits that in the present case, though the compensation has been awarded to the tune of ₹3,75,000/- but the same needs to be enhanced on the ground, even if the deceased child is less than the age of 15 years, her notional income is to be taken into account for computing the compensation, which procedure has not been adopted

by the Tribunal while awarding compensation in favour of the claimants herein. Learned counsel for the claimants submits that at least ₹30,000/- per annum income should be assessed so as to compute the Award so as to apply the multiplier of 15 and also to award the compensation under the other heads.

9. Learned counsel for the Insurance Company has not been able to dispute that while awarding the compensation in MACT No. 88 of 2014, the notional income has not been assessed. Learned counsel for the Insurance Company has not been able to dispute that as per the settled principle of law, in case the deceased is less than 15 years of age, Rs. 30,000/- per annum is the minimum income, which should have been taken into account while awarding the compensation.

10. Keeping in view the above, the Award passed in case of the appellant awarding ₹3,75,000/- needs to be amended.

11. Learned counsel for the parties jointly submit that keeping in view the settled principle of law, the appellant will be entitled for compensation to the tune of ₹6,50,000/- along with interest @ 7.5% starting from 23.12.2014 and the bifurcation of the said compensation is as under :-

1.	Notional Income Rs. 30,000/- per annum	
2.	Multiplier	15
3.	Compensation	30,000 x 15 = 4,50,000/-
4.	Other heads	50,000/-
5.	Medical Expenses	1,50,000/-
6.	Total compensation	6,50,000/-
7.	Total compensation Awarded by	3,75,000/-

MACT				
8.	Enhanced compensation	6,50,000	–	3,75,000 =
		2,75,000/-		

12. Keeping in view the above, the Award of the Tribunal is modified accordingly and it is held that the claimants will be entitled for enhanced compensation of ₹6,50,000/- instead of ₹3,75,000/- along with interest.

13. Statutory amount already deposited along with the appeal be also released in favour of the claimants and be taken as a part of payment of compensation.

14. FAO No. 7545 of 2017 is allowed in above terms.

CM-27612-CII-2017 in FAO-8482-2017

As the appeal is dismissed, the present application is also dismissed.

May 19, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No