

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

FAO No. 544 of 2018

DATE OF DECISION :- February 27, 2023

The New India Assurance Company Limited

...Appellant

Versus

Smt. Raj and others

...Respondents

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

Present:- Mr. R.C. Gupta, Advocate for the appellant.

Mr. Ashwani Arorwa, Advocate has filed vakalatnama for respondents No. 1 to 5, which be taken on record.

Briefly stated the facts of the case are that on account of death of Bira @ Beera in a motor vehicular accident statedly on account of rash and negligent driving of truck trailer by respondent No. 1 Saroop Singh, which took place on 23.11.2015 at about 9.00 P.M in the area of near Sokarh Canal, Ferozepur, legal representatives of such deceased namely his widow Smt. Raj, minor children and mother had brought a claim petition under Section 166 of the motor Vehicles Act, 1988 against Saroop Singh, driver, Sukhwinder Singh, owner and The New India Assurance Company Limited, Chandigarh, insurer of truck trailer No.PB-05S-9361.

After contest, the claim petition was accepted by Motor Accident Claims Tribunal, Chandigarh. Vide Award dated 17.10.2017 a compensation of Rs.20,12,000/- with interest at the rate of 7.5% per annum from the date of filing of claim petition till actual realization was awarded to the claimants payable by all the three respondents jointly and severally.

Finding the compensation to be on the higher side, respondent

No. 3 Insurance Company has approached this Court by way of filing an appeal notice of which was given to the respondents claimants, and such respondents claimants have put in appearance to offer a contest.

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

Learned counsel for the appellant Insurance Company has raised a plea that it was a case of contributory negligence inasmuch as the deceased was sitting on mudguard of tractor and has pointed out that there is delay of one day in lodging of the F.I.R with the police but I do not find any merit in such contentions. Since the Tribunal considering all the facts and circumstances as well as the evidence adduced by the parties has returned clear finding that respondent No. 1 Saroop Singh was the author of accident by his rash and negligent driving of the truck trailer and there is delay of one day in lodging the F.I.R., under the circumstances is immaterial. This contention of learned counsel for the appellant Insurance Company is thus rejected.

The Motor Accident Claims Tribunal, Chandigarh (for short 'The Tribunal') has taken age of the deceased to be 40 years, his occupation as a labourer and monthly income as Rs.8,000/-. Addition of 30% was made towards future prospects when in terms of judgment '**National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009**' when the deceased was self employed an addition of 40% is to be made whereas the Tribunal had made addition of 30%. Doing that the monthly income of the deceased comes out to Rs.8000+3200 =Rs.11,200/-. In that way the total annul income of deceased is arrived at Rs.11,200 x 12=Rs.1,34,400/-.

Considering the number of family members of claimants to be 5 deduction of 1/4th is to be made towards personal and living expenses of the deceased. In that way, the annul dependency of claimants is worked out to

Rs.1,00,800/-. Considering the age of deceased multiplier of 15 is to be applied. Doing that the total dependency comes out to Rs.15,12,000/-. The claimants are entitled to get Rs.16,500/- (Rs.15,000 + 10%) towards funeral expenses and Rs.16,500/- (Rs.15,000 + 10%) towards loss of estate and Rs.44,000/- (Rs.40,000 + 10%) each under the Head loss of consortium. The total amount is thus worked out to Rs.17,65,000/-. The Tribunal has awarded a sum of Rs.20,12,000/- which is on higher side and the compensation is reduced to Rs.17,65,000/-. The claimants would be entitled to get this amount at the rate of 7.5% per annum from the date of filing of claim petition till actual realization. The liability to pay this amount is joint and several.

Since in terms of the interim order passed by this Court in this appeal payment of amount in excess of Rs.15,00,000/- has been stayed. The Insurance Company is directed to pay the remaining amount with interest to the claimants within one month from today. It is directed that the apportionment of compensation and mode of payment would remain the same as directed by the Motor Accident Claims Tribunal, Chandigarh though the amount payable to the claimants shall stand reduced proportionately.

The appeal is accordingly allowed.

(H.S. MADAN)
JUDGE

February 27, 2023

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No