



FAO-2115-2016(O&M)

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

**FAO-2115-2016(O&M)
Date of decision: 08.01.2025**

The New India Assurance Company Limited

..Appellant

Versus

Vishnu and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Vinod Gupta, Advocate for the appellant

Mr.A.P.Bhandari, Advocate
and Ms. Bhargavi, Advocate for respondent no.1

Mr. Y.P.Khullar, Advocate for respondent no.2 and 3

ANIL KSHETARPAL, J. (Oral)

1. The Insurance Company assails the correctness of the award of Rs.16,21,000/- alongwith interest at the rate of 9% per annum passed by the Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'Tribunal') on the following grounds:-

i) The Tribunal has erred in increasing the income (i.e future income) of the deceased at the rate of 50% which should be 40%. Under the conventional heads, the claimants were entitled to Rs.1,80,000/- (Rs.48,000/- each towards loss of consortium) plus Rs.18,000/- for loss of estate and Rs.18,000/- for expenses incurred on the last rites.

ii) The Tribunal has erred in awarding interest at the rate of 9% per annum which should be 7.5%.

2. Learned counsel representing the respondent no.1 submits that he has no instructions on behalf of respondent no.2 and 3 who are his minor

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children. Respondent no.1 is a natural guardian of respondent no.2 and 3. Hence, respondent no.1 can watch the interest of his minor children. Learned counsel representing the respondent submits that though the respondents have not filed an appeal for enhancement of the compensation, however, the Tribunal has erred in assessing the income of the deceased at the rate of Rs.6,000/- per month without any basis. He submits that claimants had claimed that deceased Smt.Roopa was earning Rs.10,000/- per month. The claimants examined two witnesses Hari Parkash (PW1) and Dayawanti (PW2), who deposed that late Smt. Roopa was working as a part-time maid in their respective houses and was earning Rs.4,000/- and Rs.3,000/- per month each from them. It has also come on record that she was working in two more houses as a part-time maid. Thus, the Tribunal has erred in assessing her income.

3. Learned counsel representing the Insurance Company submits that the Tribunal was required to assess the income on the basis of minimum wages, however, he failed to draw the attention of the Court to any statutory provision which mandates the Court to assess the income only on the basis of minimum wages, particularly when there is positive evidence led by the claimants to prove the income of the deceased. Ordinarily, the persons working in unorganized sector do not have documentary evidence, however, a significant part of the population is working in this sector. In this case, the Insurance Company has not produced any evidence to refute the aforesaid claim. In such circumstances, the Tribunal has erred in reducing the income of the deceased to Rs.6,000/-. Accordingly, the income is assessed at Rs.10,000/- per month. Dependency i.e 2/3rd comes to Rs.6,666/-. Future



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prospects at the rate of 40% comes to Rs.2667/- and under conventional heads for loss of consortium Rs.48,000/- for each claimant, for loss of estate Rs.18,000/- and for expenses on funeral rites Rs.18,000/-. Rate of interest is reduced to 7.5% per annum from 9% per annum. Therefore, the compensation is re-assessed as under:-

Various heads	Compensation awarded by Tribunal	Compensation awarded by this Court
Monthly income	Rs.6,000/-	Rs.10,000/-
Dependency	2/3rd i.e 6000-2000= 4000/-	2/3rd i.e 10000-3334 = 6666/-
Future prospects	(50%) 4000+2000=6000/-	(40%) 6666+ 2667= 9333/-
Multiplier applied and annual income	(18) 6000x18x12= 12,96,000/-	(18) 9333x18x12= 20,15,928/-
Funeral expenses	25,000/-	18,000/-
Loss of estate and consortium	Rs.1,00,000/- (combined for both heads)	18,000/- for loss estate 48,000+48,000+48,000 (loss of consortium)
Loss of love and affection	Rs.2,00,000/-	Nil
Total amount awarded	Rs.16,21,000/-	Rs.21,95,928/-
Difference in compensation	21,47,928-16,21,000= Rs.5,74,928/-	

4. When this Court has already expressed its view, the learned counsel representing the appellant submits that he may be permitted to withdraw the appeal. At this stage, he cannot be permitted to withdraw the appeal, particularly when it has been found that the Tribunal has erred in assessing the income of the deceased. The courts are required to award appropriate amount of compensation to the claimants. Provisions of Order XLI Rule 33 of the Code of Civil Procedure, 1908 enable the appellate court to pass appropriate order irrespective of filing of the appeal by the claimants. Hence, the prayer for permission to withdraw the appeal is declined.

5. Accordingly, the appeal stands disposed of.



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6. The claimants shall be entitled to difference in amount of compensation alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of its realization.
7. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

08.01.2025

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No