

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

1. FAO-174-2014 (O&M)
XOBJC-86-CII-2014
(MACT case No.18 of 2012)
Date of decision: 30.6.2014

National Insurance Company Ltd.

...Appellant

Versus

Suman and others

...Respondents

2. FAO-695-2014 (O&M)
XOBJC-84-CII-2014
(MACT case No.20 of 2012)
Date of decision: 30.6.2014

National Insurance Company Ltd.

...Appellant

Versus

Suman and others

...Respondents

3. FAO-900-2014 (O&M)
XOBJC-85-CII-2014
(MACT case No.19 of 2012)
Date of decision: 30.6.2014

National Insurance Company Ltd.

...Appellant

Versus

Suman and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.SS Sidhu, Advocate for the appellant
in all the appeals

Mr.Sagar Aggarwal, Advocate for
Mr.Ashit Malik, Advocate
for respondent Nos. 1 and 2-claimants

Jitendra Chauhan, J.

**CM-7823-CII-2014 in XOBJC-84-CII-2014; CM-7838-CII-2014
in XOBJC-86-CII-2014 and CM-7835-CII-2014 in XOBJC-85-
CII-2014**

Despite sufficient opportunity, no reply has been filed by
the non-applicants.

Keeping in view the averments made in the applications,
the same are allowed. The delay of 30 days in filing Cross-objection
No.85 and delay of 44 days each in Cross-objection Nos. 84 and 86
is hereby condoned.

Main appeals

This judgment shall dispose of the aforementioned three
appeals, filed by the Insurance Company, challenging the impugned
Award dated 6.9.2013, passed in three claim petitions, by the learned
Motor Accidents Claims Tribunal, Kurukshetra (for short 'the
Tribunal'). The claimant-respondent Nos. 1 and 2 has also filed the
cross-objections, for enhancement of the compensation.

2. The brief facts of the case are that the claimants filed three different claim petitions on account of deaths of their son Ajay Pahwa, daughter-in-law Vanita Pahwa and grand daughter Manshi Pahwa in a road accident on 16.11.2008. The learned Tribunal awarded the compensation of Rs.9,05,000/-, 9,50,000 and Rs.2,25,000 on account of deaths of Vanita Pahwa, Ajay Pahwa and Manshi Pahwa, respectively. The driver and owner have been held liable to pay the compensation. However, it was directed that the Insurance Company shall pay and later on recover the same from the driver and owner of the offending vehicle.

It is contended by the learned counsel for the appellant-Insurance Company that the claimants, being the parents-in-law are not class-'I' legal heir and therefore, they are not entitled for compensation. He further contends that the multiplier ought to have been applied according to the age of the of the parents and not according to the age of the deceased.

Despite service, none appeared on behalf of respondent No.3, the driver. The respondent No.3 and 4 were proceeded against exparte before the learned Tribunal. Thus, their service is dispensed with.

On the other hand, the learned counsel for the claimant-respondent Nos.1 and 2 submits that with regard to the death of Ajay

Pahwa, no amount has been awarded towards future prospects. Regarding the claim on account of death of Vanita Pahwa, no deduction towards personal expenses ought to have been made. He further submits that the amount awarded on account of death of Manshi Pahwa, grand daughter of the claimants, is also inadequate.

I have heard the learned counsel for the parties and perused the case file.

In the instant case, the accident is proved on record. It is also admitted fact that on the day of accident, the driver of the offending vehicle was not holding a valid and effective driving licence. However, the vehicle was insured. The learned Tribunal has given rights to the Insurance Company to pay and recover the compensation from the driver and owner of the offending vehicle. The Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Swaran Singh 2004 ACJ 1**, noticed as under:

Under the Motor Vehicles Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver

thereof.

Accordingly, the Insurance Company has no locus standi to challenge the adequacy of the award. In view of the same, the appeals filed by the Insurance Company are dismissed.

In Cross-objection No.84-CII-2014 in FAO 695-2014

The aforesaid cross objections have been filed by the claimants seeking enhancement of the compensation awarded by the learned Tribunal on account of death of Manshi Pahwa, grand daughter of the claimants. As per postmortem report, Ex.P9, deceased Manshi Pahwa was five years of age at the time of her death. The learned Tribunal has awarded a sum of Rs.2,25,000/- as compensation. The learned counsel has not been able refer to any document of circumstance warranting enhancement of the compensation. The Court has scanned the evidence on record and feels that the amount awarded by the learned Tribunal is just and appropriate. In view of the same, the cross objections are dismissed.

In Cross-objection No.86-CII-2014 in FAO 174-2014

The aforesaid cross objections have been filed by the claimants seeking enhancement of the compensation awarded by the learned Tribunal on account of death of Vanita Pahwa, daughter-in-law of the claimants. She was 26 years of age at the time of her death. There being no cogent proof of income, the learned Tribunal

has assessed her income at Rs.5000/- per month and applied the multiplier of 17, in view of the law laid down by the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77.** There is no evidence on record with regard to her income or contribution to the family beyond the amount awarded by the learned Tribunal. However, the deceased being a house wife, no deduction should have been made in view of the law laid down by the Hon'ble Supreme Court in **Lata Wadhwa & Ors. v. State of Bihar & Ors., (2001) 8 SCC 197.** Ordered accordingly.

Accordingly, the total compensation comes to Rs.11,45,000/- (5000 (monthly income) x 12x 17 (multiplier) + 1,25,000 (conventional heads already awarded). The balance enhanced amount i.e. Rs. 2,40,000/- (11,45,000 -9,05,000 (already awarded by the learned Tribunal) shall be paid to the claimant-appellants, in the manner indicated in the impugned Award, within 60 days from the date of the receipt of the certified copy of the judgment, failing which, the appellant shall be entitled to get interest @ 7.5% per annum from the date of the filing of the cross objections till its realisation.

In view of the above, the present cross objections are partly allowed and the impugned Award is modified to the above

extent.

In Cross-objection No.85-CII-2014 in FAO 900-2014

The aforesaid cross objections have been filed by the claimants seeking enhancement of the compensation awarded by the learned Tribunal on account of death of Ajay Pahwa, son of the claimants. As per postmortem report, he was 28 years of age at the time of her death. There being no cogent proof of income, the learned Tribunal, considering him as a casual labourer, has assessed his income at Rs.5500/- per month; applied the multiplier of 17 and made a deduction to the extent of 1/3rd, which are correct. From the perusal of the award, it emerges that no amount has been awarded towards future prospects, therefore, in view of the law laid down in **Rajesh and others vs. Rajbir Singh and others (2013) 9 SCC 54**, the claimants are entitled to get 50% increase towards future prospects. Ordered accordingly.

Accordingly, the total compensation comes to Rs.12,47,000/- (5500 (monthly income) + 50% (future prospects) - 1/3rd (deduction towards personal expenses) x 12 x 17 (multiplier) + 1,25,000 (conventional heads already awarded). The balance enhanced amount i.e. Rs.2,96,500/- (12,47,000 -9,50,500 (already awarded by the learned Tribunal) shall be paid to the claimant-appellants, in the manner indicated in the impugned Award, within 60 days from the date of the receipt of the certified copy of the

judgment, failing which, the appellant shall be entitled to get interest @ 7.5% per annum from the date of the filing of the cross objections till its realisation.

In view of the above, the present cross objections are partly allowed and the impugned Award is modified to the above extent.

30.6.2014
gsv

(JITENDRA CHAUHAN)
JUDGE