

NEW INDIA ASSURANCE COMPANY LIMITED v. SAROJ , (2022-3)207 PLR 170 , PLRonline 481571

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

THE NEW INDIA ASSURANCE COMPANY LIMITED – Appellant,

Versus

SAROJ and others – Respondents.

F.A.O. Nos. 40 and 842 of 2013 (O&M)

(i) Motor Vehicles Act, 1988 (59 of 1988) Section 166 - Deceased owner of the Truck - Vehicle financed for 6,80,000/- - He was regularly repaying the amount, in instalments @ 21,572/- per month - Income of the deceased, after repaying the instalment, is assessed @ 12,000/- per month - The loan amount was to be repaid in 47 instalments - Thereafter, his income would increase - He had already paid 8 instalment - Thus, he was further required to repay the amount in 39 monthly instalments - After the period of 39 months, the income of the deceased is assessed @ 20,000/- per month. [Para 10]

(ii) Motor Vehicles Act, 1988 (59 of 1988) Section 166 - Deceased aged 33 years - Tribunal has added 30% of the existing income which should be 40% keeping in view the age of the deceased. [Para 12]

Cases referred to:-

1. (2019-1)193 PLR 213 (SC), *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram*
2. 2020 Scej 1617, 2020 PLRonline 12806 , (2020-4)200 PLR 001 (SC), *New India Assurance Co. Ltd. v. Somwati.*
3. 2020 Scej 1602 , 2020 PLRonline 11306, *United India Insurance Company Ltd. v. Satinder Kaur alias Satwinder Kaur.*

Mr.R.C.Gupta, for the appellant (In FAO-40-2013) and for the respondent No.2 (In FAO-842-2013). *Mr.Vivek Khatri and Mr.Narender Kaajla*, for the respondent No.1 to 4 (In FAO-40-2013) and for the appellants (In FAO-842-2013).

Anil Kshetarpal, J. -(4th March, 2022) -

1. This order shall dispose of the two cross-appeals, filed by the insurance company as well as the claimants assailing the correctness of the award, passed by the Motor Accident

Claims Tribunal, Hisar (hereinafter referred to as “the Tribunal”).

2. The learned counsel representing the parties do not call in question, the findings of the Tribunal with regard to the involvement of the vehicle and the accident having occurred due to the rash and negligent driving of Gaja Nand (the respondent No.5 in FAO-40-2013). The only issue pressed before this Court is with respect to the quantum of compensation.

3. Sh. Rajesh, aged 33 years, had lost his precious life in an automobile accident on 18.11.2009. He has left behind his aged mother, widow and two minor children. In the absence of the documentary evidence with respect to the income of the deceased, the Tribunal had assessed his income @ Rs. 10,000/- per month and thereafter assessed the compensation @ Rs. 23,87,000/-.

4. The learned counsel representing the insurance company contends that the Tribunal has erred in assessing the income of the deceased @ Rs. 10,000/- per month, particularly when there was no documentary evidence in support of same. Even the driving license of the deceased was not produced.

5. Per contra, the learned counsel representing the claimants contends that late Sh. Rajesh was not only a driver, but also the owner of the truck involved in the accident. He refers to the statement of PW.9 Sandeep Lamba from Magnum Finance Limited, to prove that the truck was financed by late Sh. Rajesh from the company in January, 2009 and he was regularly paying the instalment of Rs. 21,572/- per month till the truck met with an accident. He further contends that the Tribunal has erred in assessing the income @ 10,000/- per month as also while awarding the amount under the conventional heads.

6. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-books as well as the record of the Tribunal, which was requisitioned.

7. On a careful perusal of the statement of PW.9 Sandeep Lamba, it is evident that late Sh. Rajesh had purchased a new truck in January, 2009, after getting the vehicle financed for Rs. 6,80,000/-. He was regularly repaying the amount, in instalments @ Rs. 21,572/- per month. Thus, there is no substance in the argument of the learned counsel representing the insurance company. It is also not in dispute that Sh. Rajesh died in an automobile accident while driving the truck.

8. Keeping in view the aforesaid facts, it is safe to conclude that late Sh. Rajesh was the owner-cum-driver of the vehicle. He was paying the instalments @ Rs. 21,572/- per month. No doubt, no documentary evidence has been produced, even then, his income cannot be assessed equivalent to a driver, particularly when he was repaying the loan amount regularly.

9. The accident took place on 18.11.2009. After repaying the instalment, the deceased must be saving some amount for his mother, widow and minor children.

10. Keeping in view the aforesaid facts, the income of the deceased, after repaying the

instalment, is assessed @ 12,000/- per month. The loan amount was to be repaid in 47 instalments. Thereafter, his income would increase. He had already paid 8 instalment. Thus, he was further required to repay the amount in 39 monthly instalments. After the period of 39 months, the income of the deceased is assessed @ 20,000/- per month.

11. There are four dependents. Each one of them is entitled to the amount for the lost of consortium @ 40,000/- in view of the recent judgment passed by the Supreme Court in *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram*¹, (2019-1)193 PLR 213 (SC), which has been reiterated by another Division Bench in *New India Assurance Co. Ltd. v. Somwati and Others*² (2020 Scej 1617, 2020 PLRonline 12806 , (2020-4)200 PLR 001 (SC), and by a three Judges Bench in *United India Insurance Company Ltd. v. Satinder Kaur alias Satwinder Kaur*³ 2020 Scej 1602 , 2020 PLRonline 11306 , (2020) SCC Online 410. The Tribunal has erred in awarding Rs. 5,000/- towards funeral and Rs. 5,000/- for the lost of estate. As per the judgment of five Judges Bench, the amount under the head of funeral expenses and lost of estate is Rs. 15,000/- each.

12. However, on account of increase in the income in future i.e. future prospects, the Tribunal has added 30% of the existing income which should be 40% keeping in view the age of the deceased.

13. The Tribunal has deducted 1/4th of the income towards the personal and self-expenses of the deceased. The aforesaid deduction in the income is in accordance with law.

14. Keeping in view the aforesaid facts, the amount is re-calculated as under:-

Sr. No.	Heads under which the amount awarded	Amount awarded by the Tribunal (In Rs.)	Amount awarded by the High Court(In Rs.
A)	Monthly Income	10,000.00	20,000.00
B)	Future Prospects	13,000.00 (@ 30% i.e. 10,000 + 3,000)	28,000.00 (@ 40% i.e. 20,000 + 8,000)
C)	Dependency	9,750.00(@ ¼th i.e. 13,000 – 3,250)	21,000.00(@ ¼th i.e. 28,000 -7,000)
D)	Annual Income X Multiplier	18,72,000 (9,750 x 12 x 16)	40,32,000 (21,000x12x16)
E)	Funeral Expenses	5,000.00	5,000.00
F)	Loss of Estate	5,000.00	15,000.00
G)	Parental, spousal and filial consortium	25,00,000.00	1,60,000.00
H)	Expenses incurred on treatment	4,80,000.00	—
I)	Total amount awarded	23,87,000.00	42,22,000.00

15. It has been brought to the notice of the Court that the respondent No.4-mother of the deceased has died. The enhanced amount shall be shared by the widow and two minor children.

16. In view of the above, the appeal, filed by the insurance company, is dismissed, whereas that of the claimants is allowed.

17. The miscellaneous application(s) pending, if any, shall stand disposed of.

R.M.S.

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Appeal disposed of.