

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

FAO No. 3491 of 2009 (O&M)

Date of Decision: September 22, 2015

Oriental Insurance Co. Ltd.

....Appellant.

Versus

Chameli Devi and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Kush Makkar, Advocate for
Mr. Ashwani Talwar, Advocate,
for the appellant.

Mr. N.L. Sammi, Advocate,
for respondent No.1.

Mr. A.S. Sullar, Advocate,
for respondents No. 2 and 3.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

JASPAL SINGH, J.

Appellant-insurance company has preferred the instant appeal feeling aggrieved against the award dated March 31, 2009, passed by Motor Accident Claims Tribunal, Sonapat (for short, "Tribunal") in MACT No. 5-RBT of 2006-08, captioned as Chameli Devi vs. Monu @ Munish Kumar and others" preferred under Section 166 of the Motor Vehicles Act, 1966 (for brevity, "the

Act”), whereby claimants were awarded compensation to the tune of ₹2,89,054 along with interest @ 6% per annum from the date of filing of the petition till realization, on account of death of Deep Chand.

2. Brief facts of the case are that on August 08, 2005, Deep Chand and Balwan were going from Sonapat to their village Garh Shehjanpur on foot and when they reached near the house of Sita Ram Saini at about 7.30 p.m., a motor cycle make Bajaj Calliber bearing registration No. DL3SAL/2280, driven by respondent No.2 Rajesh, in a rash and negligent manner, came from Sonapat side and dashed against Deep Chand. Due to the impact, Deep Chand sustained injuries and became unconscious. Respondent No.2 fled away from the spot leaving behind his motor cycle and Deep Chand was taken to D.N. Sharma Hospital, Sonapat where he remained admitted from August 08, 2005 to August 10, 2005. Thereafter, he was referred to Maharaja Aggresain Hospital, New Delhi, where he succumbed to his injuries on August 12, 2005.

3. Assailing the impugned award, it has been ebulliently argued by learned counsel for the appellant that the same is absolutely against the evidence available on file and settled canons of law. So far as quantum of compensation is concerned, Id. Tribunal has wrongly assessed/determined the income of the deceased @ ₹6000/- per month. In fact, there is no documentary evidence adduced by the claimants in this regard. Moreover, case of the

Insurance Company is that the claimants are still owners of the agricultural land and there is no loss of income. Even, Id. Tribunal has adopted a multiplier of 5 at the age of 65 years, which again is on the higher side. The quantum of compensation accordingly deserves to be appropriately reduced. It has further been urged by learned counsel for the appellant that the impugned award is liable to be set aside on account of non-joinder of necessary party i.e. Monu @ Munish Kumar, who was the driver of the offending vehicle at the time of alleged accident. In fact, he was minor at the time of alleged accident and his name was also deleted from the arrays of respondents. Insurance company is entitled to be absolved from the liability fastened upon it as the insurance company is liable only to indemnify the owner qua the damages suffered on account of rash and negligent driving of the vehicle by its driver. In the instant case since driver Monu @ Munish Kumar is not a party, the award is also not sustainable on this ground.

4. On the other hand, learned counsel for respondent No.1-claimant has supported the award by submitting that the same is absolutely in consonance with the evidence available on file and legal proposition applicable to the facts and circumstances of the case in hand. The liability to pay the compensation first by the insurance company has been rightly fastened by Id. Tribunal.

5. Learned counsel for respondents No. 2 and 3 has submitted that the right to recover the amount of compensation from the respondents has been wrongly given to the insurance company

especially in the circumstances that the vehicle in question was duly insured, on the date and time of accident.

6. After bestowing due consideration to the various submissions made by learned counsel for the parties and scanning the impugned award, this Court does not find any substance in the contention put forth by the learned counsel for the appellant.

7. As far as the income of the deceased is concerned, it is fully proved on record that he was having an agricultural land and was physically cultivating the same. Though, the claimant has alleged the income of the deceased to the tune of ₹10,000/- per month. However, taking into consideration the area of the agricultural land and other factors, Id. Tribunal has rightly assessed the income to the tune of ₹6000/- per month and has rightly applied a multiplier of 5.

8. So far as the contention of learned counsel for the appellant that the claim petition is bad for non-joinder of necessary party i.e. the driver of the offending vehicle, is concerned, this Court is of the considered view that it carries no legal weight especially when the accident is fully proved on record. Monu @ Munish Kumar, who was earlier impleaded as respondent No.1 though subsequently deleted, has been proved to have been driving the offending vehicle at the time of accident. There is nothing on the record to suggest that he was a minor at that time. Moreover, there is documentary evidence available on file that Monu @ Munish Kumar is facing trial

under Sections 337/279 IPC before the CJM Sonapat, is suggestive of the fact that he is major. Had he been minor i.e. less than the age of 18 years, he must have been tried before the Juvenile Justice Board. Moreover, Insurance company-appellant has already been clothed with a right to recover the amount from the respondents (driver/owner) of the offending vehicle. Thus, there is no illegality if the insurance company has been liable to first pay the amount of compensation especially when the vehicle was admittedly duly insured on the date and time of accident. This Court does not find any illegality or infirmity in the impugned award. Rather, the same is absolutely justified and calls for no interference by this Court.

9. In the light of what has been discussed above and finding the instant appeal being devoid of any merits, the same is dismissed.

September 22, 2015
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(JASPAL SINGH)
JUDGE