

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1545 of 2015 (O&M)
Date of Decision: April 20, 2015

New India Assurance Company Ltd.

...Appellant

Versus

Smt.Bhago and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.C.Kapoor, Advocate
for the appellant.

INDERJIT SINGH, J.

Appellant New India Assurance Company Ltd. has filed this appeal against Smt.Bhago, Sh.Mithu Ram (claimants), Sh.Lakhwinder Kumar (driver) and Sh.Sanjiv Mehta (owner) of offending motorcycle, challenging the impugned Award dated 02.12.2014 passed by learned Motor Accident Claims Tribunal, Sahibzada Ajit Singh Nagar (hereinafter referred to as 'Tribunal'), vide which ₹9,97,000/- along with interest at the rate of 6% per annum from the date of filing of the petition till realization of the awarded amount has been awarded to the claimants on account of death of Kesho Ram alias Keshav Ram in a motor vehicular accident.

The brief facts of the case are that claimants filed claim petition against Lakhwinder Kumar (driver), Sanjeev Mehta (owner) and The New India Assurance Company Limited (insurer) of

motorcycle No.PB-70C-1621.

It is stated in the claim petition that Kesho Ram alias Keshav Ram aged 21 years, was working as Motor Mechanic at Lucky Motors, Derabassi. He was earning ₹7500/- per month. On 20.12.2012 at about 7.00 P.M., Kesho Ram alias Keshav Ram was going from Derabassi to village Bhagwasi being pillion rider of motorcycle bearing registration No.PB-70C-1621 being driven by respondent Lakhwinder Kumar at a fast speed in rash and negligent manner. When they reached near Sartaj Hotel, an unknown vehicle came from behind from the side of Bus Stand, Derabassi and struck against their motorcycle. Due to this, they both fell down on the road. Kesho Ram alias Keshav Ram received serious head injury and he was shifted to hospital, where he died on the same day. It is further stated in the claim petition that this accident was caused due to composite negligence of respondent-driver Lakhwinder Singh and driver of offending unknown vehicle. Post-mortem examination on the dead body was conducted. FIR under Section 279 and 304-A IPC was registered. The claimants being mother and father of the deceased suffered huge loss due to his untimely death and they claimed ₹30 lacs.

Upon notice, respondents-driver and owner appeared and filed joint written statement and stated that accident in question took place on 20.12.2012 at about 7.00 P.M. near Sartaj Hotel, Derabassi when motorcycle being driven by respondent-driver was struck from behind by an unknown truck but respondent-driver was not at fault. It

is further stated that motorcycle is insured with respondent-Insurance Company and was being plied with valid documents.

Respondent-Insurance Company (present appellant) also filed written statement contesting the claim petition. It is stated that respondent-driver was not holding a valid and effective driving licence to drive the motorcycle at the time of accident and further stated that claim petition is not maintainable as the accident was caused due to rash and negligent driving of driver of unknown vehicle.

The Tribunal after discussing the evidence, passed the impugned Award granting ₹9,97,000/- along with interest of 6% per annum to the claimants as mentioned above.

Aggrieved from this impugned Award, present appeal has been filed by the appellant Insurance Company.

At the time of arguments, learned counsel for the appellant argued that there is no negligence on the part of driver Lakhwinder Singh, therefore, the present appeal should be allowed. He further argued on quantum of compensation and contented that it has been given in excess.

After hearing learned counsel for the appellant and after going through the record, I find that the claimants to prove the negligence, examined PW-1 Bhago and PW-2 Dharampal, eye witness, who deposed that Kesho Ram alias Keshav Ram was going ahead of him being pillion rider on a motorcycle being driven by respondent-Lakhwinder Kumar at a fast speed in rash and negligent manner. When they reached near Sartaj Hotel, Derabassi, an

unknown vehicle came from behind from the side of Bus Stand, Derabassi and struck against their motorcycle. They both fell down and Kesho Ram alias Keshav Ram received serious head injury and shifted to hospital, where he died on the same day. He specifically deposed that accident was caused due to composite negligence of respondent-Lakhwinder Kumar as well as driver of the unknown vehicle and deceased Kesho Ram alias Keshav Ram was not at fault. Neither respondent-driver Lakhwinder Kumar nor any other witness has come to the witness box to rebut the statement of the eye witness. The statement of PW-2 Dharampal remained un-rebutted on the file. The claimants also proved on record the copy of post-mortem examination report Ex.P2 and copy of FIR Ex.R1.

From the evidence on record, I find that the statement of eye witness has remained un-rebutted on the file. There is no cogent evidence that there is no negligence on the part of Lakhwinder Kumar driver. Even Lakhwinder Kaur has not come to the witness box to prove that he was not driving the motorcycle in rash and negligent manner.

As regarding the fact that compensation should have been proportionately given, learned Tribunal has already discussed the law laid down by this Court in ***The Oriental Insurance Company Ltd. vs. Smt.Vandana Singh and others, FAO No.4615 of 2003 decided on 13.09.2010.***

As regarding the quantum of compensation awarded by the Tribunal, I find that the Tribunal has assessed the income of the

deceased only @ ₹7500/- per month as he was working as Motor Mechanic. The income of the deceased, in no way, can be held as excessive. The Tribunal has made deduction of 50% and there is no dispute regarding the multiplier as the age of the deceased was 21 years. Only ₹25,000/- as funeral expenses has been given, which also cannot be held as excessive. 50% future prospects has been given in view of the law laid down by the Hon'ble Supreme Court in ***Rajesh and others vs. Rajbir Singh and others, 2013 ACJ 1403.***

In view of the above discussion, I find that no excess amount on any ground has been awarded. The findings given by learned Tribunal are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

April 20, 2015
Vgulati

(INDERJIT SINGH)
JUDGE