

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1795 of 2015 (O&M)
Date of decision 13 .03. 2015.

National Insurance Co. Ltd.

..... Appellant.

versus

Smt. Lovepreet Kaur and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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?

Present : Ms.Vandana Malhotra, Advocate and
Ms. Monika Jangra, Advocate for the appellant.

K.C.PURI, J.

National Insurance Co. Ltd. has challenged the Award dated 01.11.2014 passed by Shri Vivek Puri, Motor Accident Claims Tribunal, Ferozepur vide which an amount of Rs.15,02,000/- stood awarded to the claimants on an claim petition filed under Section 166 of the Motor Vehicle Act on account of death of Sukhdeep Singh @ Seepa.

2. The facts, as put forth by the claimants, are that on 14.1.2004 at about 1.30 PM, the deceased was going from village Rataul Rohi to his village Mudki while driving motor cycle at slow speed and on the left side of the road. Sukhdeep Singh son of Ajaib Singh was sitting on the pillion of the motor cycle and they were being followed by Malkeet Singh on a

separate motor cycle. When they reached Talwandi Bhai near Chhotian Turn, the offending vehicle came at high speed from behind and after overtaking the motor cycle of Malkeet Singh, it struck with the motor cycle being driven by the deceased. As a result thereof, both the occupants fell down on the road and sustained injuries. The head of the deceased was crushed under the wheel of the offending vehicle and he died on the spot. The accident took place due to rash and negligent driving of the offending vehicle by respondent No.1. FIR No.7 dated 14.1.2014 under Sections 304-A, 337, 427 IPC was registered at Police Station, Ghall Khurd on the basis of statement of Malkeet Singh. It has been alleged that respondent No.2 is the owner of the offending vehicle and the same has been insured with respondent No.3. It has also been alleged that the deceased was aged about 25 years at the time of accident. He was working as labourer and earning Rs.15,000/- per month. Accordingly, the compensation was claimed.

3. On notice, respondent Nos. 1 and 2 appeared and through written reply raised preliminary objection disputing the maintainability of the claim petition. It has been alleged that the accident took place due to rash and negligent driving of the deceased. On merits, it has been denied that the deceased was driving the motor cycle at slow speed on the left side of the road or the accident took place due to rash and negligent driving of the offending vehicle by respondent No.1. It has been alleged that the accident occurred due rash and negligent driving of the motor cycle by the deceased. The deceased was driving the motor cycle at a high speed and on the wrong side, without blowing the horn and struck with the offending vehicle. Respondent No.1 was driving the offending vehicle at slow speed

and with due caution, on his left side. A false case has been registered against respondent No.1. It has been admitted that respondent No.2 is the owner of the offending vehicle and the same is insured with respondent No.3. The allegations with regard to the age, avocation and income of the deceased have been controverted.

4. Respondent No.3 filed separate written statement and raised preliminary objections alleging that no accident has taken place and the claim application is the result of collusion of the owner and driver of the offending vehicle. It has been alleged that respondent No.1 was not holding a valid and effective driving licence. The maintainability of the claim petition has been disputed.

5. On merits, the material averments put forth by the claimants have been controverted. The fact of accident and the mode and manner in which the accident took place have also been disputed. Denying other averments, answering respondent prayed for dismissal of the claim petition.

6. From the pleadings of the parties, following issues were framed :-

1. Whether Sukhdeep Singh @ Seepa son of Desa Singh had died on account of injuries sustained by him in a motor vehicular accident which took place on 14.01.2014 at 1.30PM, in the area of Talwandi Bhai, near Chhotian Turn due to rash and negligent driving of bus bearing registration No.PB 30G-4178 by respondent No.1.?OPP
2. Whether the claimants are entitled to the compensation, if so to what extent and from whom ?OPA
3. Whether the petition is not maintainable ?OPR
4. Whether the respondent No.1 was not having valid and effective driving licence at the time of accident, if so its effect ? OPR3

5. Relief.

7. The Tribunal, after assessing the testimony of the witnesses accepted the claim petition, as aforesaid.

8. Feeling dissatisfied with the above said Award, the Insurance Company has directed the present appeal.

9. I have heard learned counsel for the appellant/Insurance Company and have gone through the records of the case.

10. Learned counsel for the appellant has challenged the grant of amount of compensation in respect of grant of future prospectus of deceased. That amount has been allowed keeping in view the judgment of Hon'ble Apex Court in **Rajesh and others vs. Rajbir Singh and others reported in 2013 (3) RCR (Civil) page 170.**

11. Learned counsel for the appellant has further submitted that in authority **Reshma Kumari and others vs. Madan Mohan and another reported in 2013 (2) DNJ (SC) page 257,** future prospectus has been given only in respect of deceased, who was in Government job. The deceased was employed as labourer and amount in respect of future prospectus should not have been allowed. It is further submitted that the matter is pending before Hon'ble Apex Court in **National Insurance Co. LTD. VS. Pushpa and others in** Special Leave to Appeal (C) CC No.(s) 8058 of 2014 decided on 02.07.2014.

12. I have carefully considered the said submissions but do not find any force in that submission.

13. The matter has already been adjudicated by this Court in case **Balbir Kaur and others vs. State of Haryana and others** FAO No.3903 of

2012 decided on January 15, 2014, keeping in view the Full Bench authority of this Court reported in **Indo Swiss time Ltd. vs. Umrao and others reported as AIR 1981 Punjab and Haryana 213(1)**. In the said ruling, it is held that when there is a direct conflict between two judgments of the Apex Court rendered by co-equal Benches which of them should be followed by the High Courts and the Courts below. Inevitable a choice though a difficult one has to be made in such a situation. On principles of it appears that High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. Keeping in view the said observations, authority **Rajesh and others' case (supra)** was followed. It is not disputed during the course of argument that amount granted to the claimants is strictly in consonance with authority **Rajesh and others' case (supra)**. Future prospectus has also to be taken into account where the deceased was self-employed or non-salaried person. It has been further observed in ruling **Reshma Kumari and others' case (supra)**, that no reason has been mentioned why the benefit of future prospectus should not be granted to the person who is self-employee or to a fixed salaried person while in case **Rajesh and others' case (supra)** their Lordships of Hon'ble Apex Court have given reason why this benefit should be granted. The income of the deceased has been taken as Rs.6000/- per month and keeping in view the future prospectus to the extent of 50%, the income was taken as Rs.9000/- per month. 1/4th deduction has been made in respect of personal expenses, keeping in view authority **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr 2009(3) R.C.R.(Civil)**

77 (S.C.). The age of deceased was 29 years. So, no fault lies with the impugned award.

13. Consequently, the appeal is without any merit and the same stands dismissed.

27. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

March 13 , 2015

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