IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.5892-CII of 2015 in/and
FAO No.1909 of 2015 (O&M)
Date of Decision: March 23, 2015

New India Assurance Company Limited

...Appellant

Versus

Gurdev Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Navin Kapur, Advocate
for the appellant.

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INDERJIT SINGH, J.

CM No.5892-CII of 2015

For the reasons mentioned in the application, the same is allowed. The delay of one day in re-filing the appeal is condoned.

FAO No.1909 of 2015 (O&M)

Appellant New India Assurance Company Limited has filed this appeal against Gurdev Kaur, Gurpreet Singh, Meenu, Manpreet Singh, Gurmail Singh and Navratan Garg respondents challenging the award dated 01.11.2014 passed by learned Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'Tribunal'), vide which the claim of ₹13,02,000/- along with interest @ 6% per annum from the date of petition till the actual realization has been awarded.

The brief facts of the case are that Gurdev Kaur, Gurpreet Singh, Meenu and Manpreet Singh filed claim petition against Gurmail

Singh, Driver, Navratan Garg, Owner and New India Assurance Company, insurer of truck bearing registration No.HR-37C-1794. It is stated in the claim petition that Paramjeet Singh (deceased) on 16.09.2013 on his motorcycle bearing registration No.HR-99T-PE-1868 was coming back to his house from his rented shop within the jurisdiction of police station Pinjore. When he reached at bus stop of village Kiratpur, he struck against the rear side of truck bearing registration No.HR-37C-1794 as the truck was parked in the middle of the road, in negligent manner without any light or indication and without any reflector, giving no signal of parking. The motorcycle was driven by Paramjeet Singh in a moderate speed and due to its striking against the truck from rear side, the deceased fell down on the road along with his motorcycle and received multiple and grievous injuries on his head and he succumbed to his injuries. It is also stated in the claim petition that prior to death, the deceased was running a shop in the name of 'Pamma Truck Body Repair'. He was a good mechanic and was very hard working. He was aged about 35 years and he was running his business against monthly rent of ₹6000/- and was earning ₹30,000/- per month.

On notice, respondents No.2 and 3 (in claim petition) appeared before the Tribunal and contested the claim petition. Respondent No.2 denied the accident as alleged by the petitioners and alleged false involvement of the offending truck. Respondent No.3-Insurance Company took preliminary objections regarding maintainability etc. and took objection that respondent No.1 was not having valid and effective driving licence and he was driving the truck in violation of mandatory provisions of law. Following issues were framed:-

> *(i)* *Whether Paramjeet Singh died in motor accident dated 16.09.2013 which had taken place due to rash or negligent driving of truck bearing registration No.HR-37C-1794 driven by respondent No.1?OPP.*
>
> *(ii)* *If issue No.1 is proved, whether the claimant is entitled for compensation, if so to what amount and from whom?OPP.*
>
> *(iii)* *Whether the respondent No.2 committed breach of terms and conditions of the insurance policy, if so to what effect?OPR3.*

Petitioners examined PW-1 Gurdev Kaur, widow of Paramjeet Singh and proved Post Mortem report Ex.P1, copy of FIR Ex.P2, copy of Ration Card Ex.P3 and death certificate of deceased Ex.P4. Charanjeet, Criminal Ahlmad as PW-2, Karam Singh EHC as PW-3, who proved registration of FIR, Ajmal eye witness as PW-4 and Bhag Singh as PW-5, who proved that he had rented out one of his shop to deceased Paramjeet Singh against monthly rent of ₹5000/-. The petitioners also relied upon documents Ex.P5 to Ex.P9 and Ex.P12 VAT Invoices, Ex.P10 retail invoice and Ex.P11 cash memo.

Respondent No.2 has not led any evidence but produce photocopy of the driving licence Ex.R1, photocopy of insurance policy Ex.R2, photocopy of certificate of registration Ex.R3, photocopy of National Permit of the truck Ex.R4 and copy of certificate of fitness pertaining to the truck Ex.R5.

Learned Tribunal after going through the evidence, assessed the income of the deceased as ₹5000/- per month. The Tribunal, also from the perusal of documents and evidence on the record, held the deceased self-employed.

Learned counsel for the appellant argued that there were only four claimants, therefore, the deduction should be 1/4th in this case. He further argued that future prospects should not be given as the deceased was not self-employed. Learned counsel for the appellant also contested the finding that deceased was self-employed.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that the findings of the Tribunal are based on oral as well as documentary evidence. The oral statements of the witnesses remained unrebutted on the file. No evidence has been led by the insurance company to show that the deceased was not self-employed. It is admitted that the judgments passed by the Hon'ble Supreme Court regarding future prospects have not been set aside so far. As the income of the deceased has been assessed only ₹5000/- per month and he had four dependents upon him, therefore, it is not possible for the deceased to spend 1/4th amount on himself. It has been held by the Hon'ble Supreme Court in ***New India Assurance Co. Ltd. vs. Gopali & Ors., 2012(3) RCR (Civil) 818*** that where the deceased is a poor person affording a large number of family members, then the deductions should be made less as the deceased would not spend much amount on himself.

In view of the above discussion, that the award dated

01.11.2014 passed by learned Motor Accidents Claim Tribunal, Panchkula is correct, as per law and does not require any interference from this Court.

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

March 23, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**