

**112 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 3770 of 2015 (O&M)

Decided on: 26.5.2015.

New India Assurance Company Limited

... Appellant

Versus

Vijay Kumar and others

... Respondents

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

Present : Mr. Pardeep Goyal, Advocate,
for the appellant.

K.C.PURI.J.

This is an appeal directed by New India Assurance Company Limited against the Award dated 26.2.2015 passed by Sh. Lalit Batra, Presiding Officer, Motor Accident Claims Tribunal, Kurukshetra (for short “the Tribunal”) vide which the claim petition was partly accepted and compensation of Rs.15,62,500/- was awarded to the claimants.

Smt. Anita Devi widow, Subham & Nitin minor sons and Jila Ram @ Jile Singh father of deceased Baldev Singh filed claim petition claiming compensation to the tune of Rs.35 lacs in respect of death of Baldev Singh in a motor vehicular accident.

Briefly stated, on 15.8.2013 Baldev Singh was standing in front of gate of Best Food Rice Mills in village Nayorta

near Indri, District Karnal on kacha portion of the road and that too on appropriate left side of the road. Karam Singh son of Ram Kumar was also standing near the gate of above said rice mill. At about 6.30 PM respondent No.1 Vijay Kumar while driving offending vehicle in rash and negligent manner and at a fast speed, came from the side of Karnal and while coming on the wrong side, struck the offending vehicle against Baldev Singh due to which Baldev Singh fell down and he was crushed by the offending vehicle and thereby he received multiple injuries on his person. After causing the accident, respondent No.1 fled away from the spot while leaving the offending vehicle on the spot. Baldev Singh was shifted to Community Health Centre, Indri where he was declared brought dead. FIR No.304 dated 15.8.2013 under Sections 279 and 304-A IPC was registered in Police Station Indri.

On notice, respondents No.1, 2 and 2-A driver and owners of offending vehicle appeared in the Court and filed joint written statement taking preliminary objections of maintainability, cause of action and jurisdiction etc. On merits, factum of accident was denied. It has been pleaded that respondent No.1 was having a valid and effective driving licence and the offending vehicle was insured with respondent No.3. False FIR has been registered against respondent No.1. Rest of the contents of claim petition were denied being false.

Respondent No.3 insurance company appeared and filed separate written statement taking preliminary objections of maintainability, cause of action, estoppel, mis-joinder and non-joinder

of necessary parties. On merits, factum of accident due to negligent driving of offending vehicle has been denied. False FIR has been registered just to grab compensation from the insurance company. It was further pleaded that respondent No.1 driver of the vehicle was not having a valid and effective driving licence at the relevant time and thus, offending vehicle was being driven in violation of terms and conditions of the insurance policy. Therefore, the insurance company is not liable to pay the amount of compensation.

No replication to the written statements was filed.

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

1. Whether the motor vehicle accident dated 15.8.2013 is an outcome of rash and negligent driving of tractor trailer bearing registration No. HR-07-M-0349 by Vijay Kumar, respondent No.1 OPP
2. Whether the respondent driver of aforesaid vehicle was not having valid driving licence at the time of alleged accident ?OPR
3. Whether the petitioners are entitled to compensation on account of death of Baldev Singh, in the aforesaid accident ? If so as to what amount and from whom ?OPP
4. Relief.

In order to prove their case, the claimant Anita Devi

stepped into the witness box as PW-1 and examined Karam Singh as PW-2 and closed the evidence.

In rebuttal, the respondents examined RW-1 Kulbushan Sharma, Motor Vehicle Clerk, Registration Authority, Thanesar and RW-2 Vijay Kumar and closed the evidence.

After appraisal of the evidence, the Tribunal returned finding on issue No.1 in favour of the claimants and against the respondents and held that the accident was caused due to rash and negligent driving of offending vehicle by respondent No.1. Issue No.2 was decided against the insurance company and in favour of the respondents No.1, 2, and 2-A and it was held that respondent No.1 Vijay Kumar driver of the offending vehicle was holding a valid and effective driving licence to drive the offending vehicle at the time of accident.

Under issue No.3, the Tribunal assessed the income of the deceased as Rs.6655/- per month. The deceased was aged 35 years at the time of death. An addition of 50% to the income of the deceased was given in respect of future prospects. So, the amount was calculated as Rs.9982/- (6655+3327). The yearly income was assessed as Rs.1,19,784/-. Deduction of 1/4th was made towards personal expenses of the deceased and the dependency was assessed as Rs.89,838/- (1,19,784/- minus Rs.29,946/-). Multiplier of 16 was applied and the compensation was assessed as Rs.14,37,408/- (89,838 x 16). A sum of Rs.1,25,000/- was awarded for consortium to wife, loss

of love and affection to wife and minor children and father, funeral expenses and loss of estate. In this manner, total compensation of Rs.15,62,408/- which was rounded off to Rs.15,62,500/- was awarded to the claimants vide impugned Award dated 26.2.2015.

Feeling dis-satisfied with the aforesaid Award dated 26.2.2015, the insurance company has filed the present appeal.

Learned counsel for the appellant has submitted that findings of the Tribunal on issue No.2 are wrong. Vijay Kumar was permanent resident of District Kurukshetra and he is alleged to have been issued licence from Nagaland. The said licence cannot be said to be a valid document. Normally, the licence is issued at a place where the driver ordinarily resides. The ordinary residence of Vijay Kumar driver was Village Niwarsi, Police Station Ladwa, District Kurukshetra and as such, the learned Tribunal has wrongly decided issue No.2 against the insurance company.

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

It is settled law that onus to prove that driver was not holding a valid driving licence lies on the insurance company. The driver has produced the driving licence. The insurance company has not summoned any one from Nagaland Transport Authority to prove that the said licence is invalid. The driver Vijay Kumar has also stated that he has been visiting and plying vehicle at Nagaland and as such

there is no abnormality in issuing the licence by Nagaland Transport

Authority. The fact remains that onus is on the insurance company to prove that Vijay Kumar was not having a valid driving licence and insurance company has failed to discharge the onus of that issue. So, the finding on issue No.2 stands affirmed.

The second contention raised by learned counsel for the appellant is that future prospects cannot be taken into account while granting the amount of compensation. It is submitted that matter regarding grant of future prospects in respect of fixed salaried person and self-employed person is pending before the larger Bench of the Hon'ble Apex Court which is clear from the authority **National Insurance Company Limited vs. Pushpa and others (SLP No. 8085 of 2014 decided on 2.7.2014)**. So, it is submitted that the future prospects has been wrongly allowed.

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

The three Judge Bench of the Hon'ble Apex Court in **Rajesh and others vs. Rajbir Singh and others 2013 ACJ 1403** has held that future prospects in respect of fixed salaried person and self employed person are also to be allowed. It cannot be said that income of fixed salaried person or that of self-employed would not increase with the passage of time. This aspect of the case has been dealt with by this Court in **Balbir Kaur and others vs. State of Haryana and others (FAO No.3903 of 2012 decided on January 15th, 2014)** and

this Court comes to the conclusion that future prospects should be

given by following the judgment of **Rajesh's case (supra)**. Mere fact that matter has been referred to larger Bench is not a ground to interfere. More so, when there is nothing on the file that authority **Rajesh's case (supra)** has been kept in abeyance or the operation of the said judgment has been stayed by the Hon'ble Apex Court.

No other point has been urged before me.

So, in view of above discussion, the appeal is without any merit and the same stands dismissed.

26.5.2015.
SN

(K.C.PURI)
JUDGE