IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.4092 of 2015 (O&M)
Date of decision: 10.07.2015

United India Insurance Co. Ltd

….. Appellant

versus

Mohinder Kaur and and others

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Paul S. Saini, Advocate for the appellant

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?

Kuldip Singh, J.

CM No.13147-CII of 2015

This application has been filed for condonation of 8 days delay in filing the appeal. The application is accompanied by an affidavit. For the reasons mentioned therein, it is allowed and 8 days delay in filing the appeal stands condoned.

FAO No.4092 of 2015

Insurance company has filed this appeal against the award dated 5.2.2015 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib (for short, 'the Tribunal), vide which, compensation to the tune of Rs.33,82,432/- was granted in favour of the claimant, along with interest @ 9% per annum from the date of filing of claim petition till realization. The appellant insurance company being the insurer of the offending car was liable to pay the compensation.

Brief facts of the case are that according to the claimant her son Ranjit Singh was working in Barcelona (Europe) and earning Rs.77,000/- per month (1000 Euro per month). On the fateful day i.e. 21.5.2014, when Ranjit Singh had come to India and he was going with his friend Sukhdev Singh on the Moped bearing registration No.PB-23-C-6326 being driven by Ranjit Singh on the left side of the road then at about 9.30 PM near village Jeonpura on GT road his moped was hit by a car bearing registration No.HR-01-AP-4086 which came from the rear side in a rash and negligent manner. Both Sukhdev Singh and Ranjit Singh received injuries. Ranjit Singh died at the spot, whereas, other injured Sukhdev Singh was shifted to Civil Hospital Fatehgarh Sahib but he also succumbed to the injuries. FIR No.47 dated 21.5.2014 under Sections 279, 427, 304-A IPC was registered as per version of Gurwinder Singh.

Respondent Nos.1 and 2 before the Tribunal i.e. Driver and the owner claimed that their vehicle has been falsely implicated by the claimant in connivance with police. FIR is false. The car was insured with the United India Insurance Company Limited i.e. the present appellant during the relevant period.

Respondent No.3 in the separate statement took the plea that the accident took place due to the sole negligence on the part of the deceased Ranjit Singh, who was driving the moped. Other plea was also taken that the driver of the offending vehicle was not holding valid driving licence, registration certificate etc.

Respondent No.4, who happens to be the wife of the deceased Ranjit Singh, in her separate written statement submitted that after the death of her husband Ranjit Singh, claimant had paid her sum of Rs.40 lac, out of which, Rs.34 lac was by way of bank draft and Rs.6 lac in cash and she had accordingly, executed an affidavit dated 5.7.2014 in favour of the claimant. She prayed that award may be passed in favour of the claimant only. From the pleadings following issues were framed:-

1. *Whether the respondent No.2 caused the death of Ranjit Singh since deceased by drivinng his car No.HR-01-AP-4086 in a rash and negligent manner on 21.5.2014 at about 9.30 PM in the area of Mulepur, District Fatehgar Sahib?OPP*
2. *Whether the claim petition is not maintainable?OPR*
3. *Whether the claimants have no cause of action to file the claim petition against the respondents? OPR*
4. *Whether the driver of car No.HR-01-AP-4086 had no valid driving licence at the time of accident and the said car had no valid registration certificate and other documents?OPR*
5. *Whether the claimant is entitled for compensation as prayed for from the respondents?OPP*
6. *Relief.*

The Tribunal recorded the finding that the deceased was working in Spain. It also concluded that minimum wages in Spain in the year 2014 were 485 Euro per month and the exchange rate of Euro one was equal to Rs.70.5. The income of the deceased comes to Rs.34,192/- per month. Half was deducted as personal expenses and the dependency of the claimant was calculated at Rs.2,05,152/- per annum, by referring the decision of this Court with regard to quantum of compensation regarding Non Resident Indians. It was held that as Ranjit Singh was 32 years of age at the time of his death, therefore, multiplier of 16 was applied and the compensation was calculated at Rs.32,82,432/-. Rs.50,000/- on account of loss of love and affection, Rs.50,000/- on account of funeral and last rites were allowed and the total compensation was accordingly calculated, as mentioned above.

Learned counsel for the appellant has vehemently argued that in this case there is no proof that the deceased was permanent resident of Spain and that he was earning the minimum wages of 485 Euro. It has been argued that no bank account of the deceased or the claimant has been proved on file to show that the deceased was sending money to her mother. It has been further argued that the fact that the deceased was going on a moped would show that he was living from hand to mouth. As per his passport Ex.P2, he had reached Delhi Airport on 3.2.2014 i.e. more than three months before the accident. Therefore, he cannot be said to be settled in Spain.

I find the argument to be without force. Passport Ex.P2 was proved, which shows that it was issued by the Indian Embassy at Madrid (Spain) on 12.8.2008 indicating that the deceased was living their for a considerable period. The fact that he came back from Spain on 3.2.2014 i.e. after 5 ½ years of issuance of passport by Indian Embassy in Spain, goes to show that he had been living there. It is not denied that the wife of the deceased is also settled in Spain, as it is evident from the affidavit given in favour of the mother of the deceased. It is a common knowledge that all the people migrating to foreign country are not working on papers. Many times they get salary in cash, for which there is no proof. Similarly, even if the bank accounts of the deceased or the claimant have not been produced, the trial Court was justified in concluding that the deceased must be earning the minimum wages, which were found to be 485 Euro per month. In Europe, it is crime to pay less than minimum wages. Therefore, minimum wages were rightly assessed. The fact that claimant was able to pay Rs.40 lac in cash to widow of the deceased in lieu of her claim, out of which, Rs.34 lac is by way of bank draft, goes to show that claimant who is 63 years of age, was getting income from other sources also, which is primarily appears to be contributed by her son. She has already paid the share of compensation to the widow of the deceased and now she is entitled to get the entire compensation which includes the share which was to be allowed to the widow of the deceased.

In these circumstances, I am of the view that the Tribunal rightly took the minimum wages in Spain as a base to calculate the compensation. However, at the same time, it is found that half has been deducted towards personal expenses, which is contrary to the authority in the case of *Sarla Verma and others v. Delhi Transport Corporation and others, 2009 ACJ 1298 (SC)*. No compensation has been awarded on account of future prospects and for love and affection to the mother only Rs.50,000/- has been allowed as against

Rs.one lac permissible under law.

It being so, I do not find any illegality or infirmity in the impugned award. Accordingly, the present appeal stands dismissed.

10.07.2015 **(Kuldip Singh)**
gk **Judge**