

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

**F.A.O. No.4096 of 2015 (O&M)
Date of Decision: 10th July, 2015**

Oriental Insurance Company Limited

...Appellant

Versus

Mohar Pal & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Harsh Aggarwal, Advocate,
for the appellant.

- 1· Whether Reporters of Local papers may be allowed to see the judgment? yes
- 2· To be referred to the Reporters or not? yes
- 3· Whether the judgment should be reported in the Digest? yes

Naresh Kumar Sanghi, J.(Oral)

The present first appeal against the order has been filed by the Oriental Insurance Company Limited challenging the Award dated 16.04.2015 passed by learned Motor Accidents Claims Tribunal, Palwal, (for brevity “learned Tribunal”) whereby a sum of ₹ 24,75,000/- (Rupees twenty four lacs and seventy five thousand only) along with interest at the rate of 7.5% per annum from the date of filing of the petition till its realization was granted as compensation to the claimants, Mohar Lal and Smt.Satyawati (parents of Dharmender Kumar).

Mr.Harsh Aggarwal, learned counsel for the appellant-Insurance Company has submitted as follows:-

(i) the claimants have failed to substantiate that

Dharmender Kumar (since deceased) was an employee of M/s Usha Iron Works, Ballabhgarh, District Faridabad, and was getting a salary of ₹ 15,000/- (Rupees fifteen thousand only) per month;

(ii) the learned Tribunal has awarded 50% monthly income as future prospects while calculating the award in contravention of the order passed by Hon'ble the Supreme Court in the matter of **National Insurance Company Ltd. vs. Pushpa & Ors.**, vide S.L.P. No.8058 of 2014; and

(iii) the claimants were the parents of Dharmender Kumar (since deceased) and as such, the amount awarded to them by applying the multiplier of 18 was on higher side.

I have heard learned counsel for the appellant and with his able assistance gone through the material available on record.

Since the factum of accident and death of Dharmender Kumar aged about 23 years, are not in dispute, therefore, this Court does not deem it necessary to discuss those issues in detail . However, to give a clear picture of the case, it is sufficient to mention that on 25.12.2013 at about 9:00 am Dharmender Kumar (since deceased) along with other persons was travelling in Santro car bearing registration No.HR-29L-1913 and the said car reached near village Dhatir drain in the meantime an oil tanker

bearing registration No.GJ-9AV-1046 driven by Vinod Kumar (respondent No.3) in a rash or negligent manner at a very fast speed emerged there from the opposite side of Santro car and hit the car, as a result thereof Dharmender Kumar and other occupants of Santro car sustained multiple injuries. Dharmender Kumar later died on account of the injuries received in the accident. The driver of the offending vehicle i.e oil tanker ran away from the spot. The matter was reported to the police vide FIR No.706 dated 26.12.2013 at Police Station, Sadar, Palwal.

The claimants/parents of deceased Dharmender Kumar alleged that Dharmender Kumar (since deceased) was aged about 23 years and was working in M/s Usha Iron Works, Ballabgarh, District Faridabad. He was getting a salary of ₹ 15,000/- (Rupees fifteen thousand only) per month. It was further averred that the claimants were dependent on the earnings of Dharmender Kumar (since deceased).

The driver and the owner of the offending vehicle were proceeded against ex parte during trial/inquiry by the learned Tribunal.

The appellant/Insurance company appeared and filed the written statement by taking various preliminary objections and on facts it was averred that the FIR in question was registered against the driver of the offending vehicle in

collusion with the police just to extract the compensation from the Insurance company.

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

1. Whether the death of Dharmender Kumar son of Sh.Mohar Pal caused in the accident which occurred on 25.12.2013 at about 9:00 p.m at Gonchi Drain, area of Village Dhatir within the jurisdiction of P.S Sadar Palwal, District Palwal caused by tanker No.GJ-09-AV-1046 being driven by respondent no.1 Vinod Kumar and owned by Naresh Kumar Patel respondent no.2? OPP.
2. If issue no.1 is proved, whether petitioners are entitled to compensation, if so, to what amount and from whom? OPP.
3. Whether respondent no.1 was not holding valid and effective driving licence at the time of accident and was being driven in violation of the condition of the insurance policy?OPP.
4. Whether respondent Nos.1 and 2 have violated any terms and conditions of insurance policy exonerating the liability of the insurance company? OPR-3
5. Whether the petitioners have no locus-standi and cause of action to file the claim petition? OPR-3

6. Relief.

On the basis of the evidence led by the parties, the learned Tribunal decided issue no.1 in favour of the claimants holding that the accident in question had taken place due to the sole negligence on the part of the driver of the offending vehicle i.e the oil tanker bearing registration No.GJ-9AV-1046. While deciding issue no.2, learned Tribunal held that the date of birth of Dharmender Kumar (since deceased) was 14.10.1990 and he was employed with M/s Usha Iron Works, Ballabgarh, District Faridabad and getting ₹ 15,000/- (Rupees fifteen thousand only) per month as salary. It was also concluded that the claimants were dependent on the earnings of Dharmender Kumar (since deceased). Placing reliance on **Sarla Verma and Others** vs. **Delhi Transport Corporation and Anr.** 2009(3) RCR (Civil) 77, learned Tribunal further held that while calculating the award 50% monthly income of Dharmender Kumar (since deceased) can be added as future prospects. While taking into consideration the age of the deceased it was thought proper by the learned Tribunal to apply the multiplier of 18. The learned Tribunal further held that the claimants were entitled to ₹ 25,000/- (Rupees twenty five thousand only) for funeral expenses and last rites etc. They were further entitled to ₹ 10,000/- (Rupees ten thousand only) for love and affection and additional ₹ 10,000/- (Rupees ten thousand only) for loss of estate and hence total sum

of ₹ 24,75,000/- (Rupees twenty four lacs and seventy five thousand only) along with interest at the rate of 7.5% per annum from the date of filing of the petition till its realization was awarded to the claimants. The appellant/insurance company was directed to make the payment within 30 days of passing of the award otherwise the appellant/insurance company shall pay interest at the rate of 12% per annum for the delayed payment.

To deal with the first argument of learned counsel for the appellant that Dharmender Kumar (since deceased) was neither working with M/s Usha Iron Works, Ballabgarh, District Faridabad nor getting a salary of ₹ 15,000/- (Rupees fifteen thousand only) per month does not appear to be correct. In order to prove the said facts, the claimants have examined Arun Kumar (PW2), an Accountant in M/s Usha Iron Works, Ballabgarh, District Faridabad. On the basis of the record brought by PW2, he deposed that Dharmender Kumar was in service of his firm from 02.10.2013 to 24.12.2013 and was working as Supervisor and getting a salary of ₹ 15,000/- (Rupees fifteen thousand only) per month. He also proved the salary certificate Ex.P3. In addition to the examination of PW2, the claimant, Mohar Pal, has also appeared as witness and he too reiterated the said fact and as such, this Court is of the considered opinion that Dharmender Kumar (since deceased) was working with M/s Usha Iron Works, Ballabgarh, District Faridabad and was getting a salary of ₹ 15,000/- (Rupees fifteen thousand only) per month.

The second argument of learned counsel for the appellant that 50% monthly income of the deceased could not be added as future prospects while calculating the amount of compensation is also against the latest judgment passed by Full Bench of Hon'ble the Supreme Court in the matter of **Munna Lal Jain and Anr. vs. Vipin Kumar Sharma & Ors. 2015(5) JT 1 (Supreme Court)**. While discussing the whole case law Hon'ble the Supreme Court permitted the addition of 50% monthly income of a deceased aged about 30 years while calculating the award. It was further held in the above said case that multiplier should be applied taking into consideration the formula prescribed by Hon'ble the Supreme Court in the matter of **Sarla Verma's** case (supra) and hence the multiplier of 17 was applied in the case of death of a person between 26 to 30 years in the above said case, therefore, there is no force in the second argument of learned counsel for the appellant.

So far as third argument of learned counsel for the appellant is concerned, that has also to be rejected. The learned Tribunal has already deducted 50% amount of monthly income as personal expenses of the deceased and that is the correct formula applied by the learned Tribunal.

While dictating the present order learned counsel for the appellant pointed out that the learned Tribunal has ordered to pay the penal interest at the rate of 12% per annum if the

awarded amount was not deposited within 30 days of passing of the award.

Learned counsel submits that the amount awarded by the learned Tribunal shall be deposited within one month of passing of this order, therefore, the condition of imposing the penal interest may be waived off.

In view of the statement suffered by learned counsel for the appellant at bar in this Court, the direction imposing the penal interest at the rate of 12% per annum for the delayed period is waived off. It is however made clear that if the amount ordered by learned Tribunal is not deposited with the learned Tribunal or paid to the claimants as per the statement of the counsel for the appellant then the order passed by the learned Tribunal shall be sustained.

With the above discussion there is no force in the present appeal and the same is hereby dismissed.

The statutory amount of ₹ 25,000/- (Rupees twenty five thousand only) deposited with this Court by the appellant/ Insurance company be remitted to the learned Tribunal for disbursement to the claimants as per its order.

July 10, 2015
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(Naresh Kumar Sanghi)
Judge