

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

FAO No. 4406 of 2015(O&M)

Date of Decision: November 6 , 2015.

National Insurance Company Ltd.

..... APPELLANT (s)

Versus

Bijenderi and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. L.M.Suri, Senior Advocate with
Mr. Neeraj Khanna, Advocate
for the appellant.

1. Whether reporters of local papers 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?

LISA GILL, J.

Present appeal has been preferred by the National Insurance Company Ltd. challenging award dated 04.09.2014 passed by the Motor Accident Claims Tribunal, Palwal (hereinafter referred to as, the 'Tribunal') in respect to the compensation awarded to the legal representatives of deceased – Rattan Singh in claim petition No. RBT 37 of 2011/2014. Two grounds of challenge are raised in this case i.e.,

- (i) The Tribunal has grossly erred in affording an addition in the income of the deceased to the extent of 50% on account of loss of future prospects keeping in view the fact that it was notional income which was assessed.

- (ii) That it is the Driving Licence of one Mahesh which was produced on record whereas the respondent-driver is Bablu therefore, the finding of learned Tribunal on this count is grossly erroneous and perverse.

Brief facts of the case are that, Rattan Singh (since deceased) alongwith Ravi son of Bhuley were proceeding from Badhraon – Azad Nagar to in-laws' house of Rattan Singh in village Kalandergarhi on motorcycle No. HR-50-7451 on 18.03.2011. Deceased was driving the motorcycle whereas, Ravi was on pillion. They were followed by Rattan Singh's cousin Ved Ram on another motorcycle No. HR-52-5862. Ashok son of Shri Chand was pillion rider on the second motorcycle. When they reached link road at a distance of one kilometer from Jewar-Khurja Road, a tanker bearing registration No. UP-13C-3031 being driven in a rash and negligent manner by respondent No.8 – Bablu son of Ram Sarup came from opposite side and struck against the motorcycle of deceased – Rattan Singh. Both Rattan Singh and Ravi sustained injuries. Rattan Singh succumbed to his injuries on 21.03.2011 in Om Spero Hospital. FIR No.38 dated 18.03.2011 under Sections 279/337/338/427 IPC was registered against respondent No.8 – Bablu at Police Station Jewar, District Gautambudh Nagar.

Claim petition No.RBT 37 of 2011/2014 under Sections 166/140 of the Motor Vehicles Act, 1988 was filed by the legal representatives of deceased – Rattan Singh i.e., the widow, four minor children and parents claiming compensation on account of death of Rattan Singh, who was aged 25 years at the time of accident. He was stated to be a carpenter working at Rahul Furniture Works, Palwal and getting a salary of ₹15,000/- per month.

Claim Petition No.RBT 86 of 2011/2014 was preferred by injured –

Ravi claiming compensation on account of the injuries suffered by him in the

aforementioned accident.

Claim petitions were resisted by the respondents. Following issues were framed by the Tribunal:-

1. Whether accident in question took place due to rash and negligent driving of tanker No. UP-13C-3031 by respondent No.1?OPP
2. Whether the petitioners in both the petitions are entitled to compensation, if so how much and from whom?OPP
3. Whether the respondents No.1 and 2 have violated the terms and conditions of insurance policy, if so to what effect?OPR3
4. Relief.

Learned Tribunal on appreciation of the evidence on record concluded that the accident, in question, took place due to the rash and negligent driving of tanker No. UP-13-C-3031 by its driver.

Total compensation of ₹11,31,714/- was awarded by the Tribunal to the claimants in claim petition No. RBT 37 of 2011/2014 preferred by the legal representatives of deceased – Rattan Singh, the detail of which is as under:-

<i>Sr. No.</i>	<i>Head under which amount awarded</i>	<i>Amount</i>
1.	Loss of Dependency	Rs.11,01,600/-
2.	Compensation on account of treatment/medical expenses	Rs.10,114/-
3.	Transportation & last rite expenses	Rs.10,000.00
4.	Compensation on account of loss of consortium	Rs.10,000.00
	Total	Rs.11,31,714/-

Age of deceased Rattan Singh was accepted to be 25 years at the time of accident. Learned Tribunal has concluded that doubtlessly Rohtash

Singh, proprietor of Rahul Furniture House, Palwal has been examined as PW4, who stated that deceased – Rattan Singh was working as carpenter at his furniture house and was receiving a salary of ₹15,000/- per month, however, as no document was placed on record to show that Rohtash was actually running any such furniture house or the deceased was employed at his shop therefore, it could not be concluded that deceased was employed as a carpenter at his shop earning ₹15,000/- per month as salary. He was treated to be a labourer and his income was assessed as ₹4,500/- per month i.e., ₹54,000/- per annum.

An addition of 50% was afforded on account of loss of future prospects, total income of the deceased assessed as ₹6,750/- per month i.e., ₹81,000/- per annum. Deduction of 1/5th was applied and dependancy of the claimants was worked out to be ₹64,800/- per annum. Multiplier of 17 was applied and the claimants were held entitled for an amount of ₹11,01,600/- for the loss of dependancy.

Learned senior counsel for the appellant vehemently argues that when the claimants have failed to prove the income of deceased, the learned Tribunal has wrongly taken income of deceased to be ₹4,500/- per month. Furthermore, in cases where the court assesses notional income claimants having failed to adduce any evidence to prove the income of deceased, there is no question of any addition in the income on account of loss of future prospects. Reliance is placed on decision dated 26.02.2015 in FAO No.3483 of 2013 (Cholamandalam MS General Insurance Co. Ltd. v. Lakhmi Chand and others).

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

It is relevant to note that this Court while deciding FAO No.3483 of 2013 (Cholamandalam MS General Insurance Co. Ltd. v. Lakhmi Chand and others) referred to two decisions of Hon'ble Supreme Court. In **Krishan Gopal v. Lala, 2013(4) RCR(Civil) 276** a child had died and the Hon'ble Supreme Court while awarding compensation on account of the child's death did not provide for any addition on account of future prospects. Neither was any component added on account of future prospects where a house wife had died in **Arun Kumar Aggarwal and another v. National Insurance Company Ltd., 2010(3) PLR (SC) 418**. It is in such situations where the deceased was a student or a housewife, the court felt that it may not be appropriate to award further benefit of notional future prospects particularly when the court was not making deduction on account of personal expenses.

Present is not a case of a student or a housewife. Learned Tribunal has chosen not to accept the statement of PW4 Rohtash that deceased was working as a carpenter on a salary of ₹15,000/- per month in the absence of any documentary evidence on record. It is in this situation, it has been held by the Tribunal that deceased earning a salary of ₹15,000/- per month as salary was not proved therefore, he be treated as a labourer and his income was assessed at ₹4,500/- per month. There is no finding to the effect that the deceased was not engaged in any vocation.

Hon'ble Supreme Court in **V. Mekala v. M.Malathi and another, 2014(2) RCR(Civil) 880** in the case of a student afforded 50% increase towards future prospects of the injured-claimant. Victim in the said case was a 16 years old girl. This Court in **Gian Chand v. Radha and others, 2015 AAC 956** has

itself afforded an addition of 50% towards future prospects in the case of a deceased, whose income could not be proved. Income of the deceased had been assessed as per the minimum wages.

Therefore, I find no merit in the said contention raised on behalf of the appellant.

In respect to the other argument, it is contended that Driving Licence placed on record by the owner is of one Mahesh whereas, driver of offending vehicle is Bablu therefore, the Driving Licence on record is not of the driver of the offending vehicle. In this situation, it is urged that the Insurance Company is liable to be absolved of its liability. Abovesaid plea on behalf of the appellant is equally devoid of any merit.

Learned senior counsel for the appellant argues that respondent-driver chose not to appear before the Tribunal and was proceeded *ex parte*. He never produced Driving Licence. It is only the owner of the offending vehicle who placed on record a Driving Licence of one Mahesh whereas, the name of driver of the offending vehicle is Bablu.

I have gone through the record, which was summoned. It is the specific case of the owner of the offending vehicle that Mahesh and Bablu are one and the same person. Driving Licence bears the photograph of the said respondent. Father's name of Mahesh is duly mentioned as Ram Sarup in the Driving Licence. Claim petition clearly mentions the driver's father to be Ram Sarup. Challan/report under Section 173 Cr.P.C. filed in FIR No. 38 dated 18.03.2011 duly mentions the accused as Bablu @ Mahesh son of Ram Sarup.

It is indeed borne out by the report under Section 173 Cr.P.C. that

driver of the offending vehicle is mentioned as Bablu @ Mahesh son of Ram Sarup. It is also to be noted that in the light of this evidence, appellant – Insurance Company has not brought on record any evidence to negate the abovesaid. There is nothing on record to suggest that Mahesh son of Ram Sarup and Bablu son of Ram Sarup are not one and the same person. Therefore, no benefit can accrue to the appellant – Insurance Company on this count. It is rightly held by the Tribunal that there is no confusion with regard to the identity of the respondent – driver.

No other argument has been addressed.

Learned counsel is unable to point out any infirmity, illegality or perversity which warrants interference by this Court.

Consequently, finding no merit in this appeal, same is dismissed.

November 6 , 2015.
'om'

(LISA GILL)
JUDGE