

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 5819 of 2015(O&M)

Date of Decision: September 8 , 2015.

Oriental Insurance Company Ltd.

..... APPELLANT (s)

Versus

Maina Devi and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ram Avtar, 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 Oriental Insurance Company Ltd. challenging award dated 19.05.2015 passed by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as, the 'Tribunal') whereby a sum of ₹16,91,964/- has been awarded to the respondent-claimants on account of the death of Hukam Chand @ Hukam Singh.

Facts as revealed in the claim petition are that, Hukam Chand @ Hukam Singh (deceased) alongwith Surinder and Sunil Kumar was returning from District Palwal towards village Kalayat in Alto car bearing registration No. DL-1TAK(T)-2066 on 07.12.2012 after attending a wedding ceremony. Car was being driven by Surjit Singh son of Bihari Singh on left side of the road at a

moderate speed. A bus carrying members of marriage party including Virender Singh was following the said car. When they reached Rohtak-Jind road in the area of village Gatoli, District Jind at about 12.00/12.15 a.m. i.e., intervening night of 07/08.12.2012, a Canter bearing registration No. HR-56-6831 being driven in a rash and negligent manner by respondent, namely, Parveen Kumar approached from Jind side. Said Canter was proceeding at a high speed apart from being driven in a rash and negligent manner. It came towards wrong side of the road and struck against the Alto car due to which all the occupants therein received serious injuries. Surjit Singh, who was driving the car died at the spot. Other injured were shifted to Government Hospital, Jind. Hukam Chand @ Hukam Singh was referred to PGIMS Rohtak but he succumbed to his injuries on 08.12.2012 itself. FIR No.231 dated 08.12.2012, under Sections 279/304A IPC was registered against Parveen Kumar, driver. Charge was framed against him.

Claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 by the widow and son of deceased – Hukam Chand @ Hukam Singh, married daughters of the deceased being arrayed as proforma respondents. Following issues were framed by the Tribunal:-

- “1. Whether the accident in question took place on 8.12.2012 at about 12.00/12.15 a.m. (midnight) on Rohtak-Jind road, in the area of village Gatoli under Police Station Julana due to rash and negligent driving of the Canter bearing registration No. HR-56-6831 by respondent No.1 and it resulted in death of Hukam Chand alias Hukam Singh?OPP
2. If issue No.1 is proved in affirmative, what extent of compensation the petitioners would be entitled to and from whom?OPP
3. Whether the terms and conditions of insurance policy were violated by respondent No.1 and insurance company is not liable to indemnify the compensation as alleged?OPR-3.
4. Relief.”

Learned Tribunal on consideration of the facts and circumstances as well as evidence on record concluded that the accident, in question, had occurred due to the rash and negligent driving on the part of respondent – Parveen Kumar. Compensation to the tune of ₹16,91,964/- was awarded by the Tribunal as detailed below:-

Sr.No.	Heads	Calculation
(i)	Income	₹20,374/- per month
(ii)	1/3rd of (i) deducted as personal & living expenses of deceased	₹20,374/- -6791= ₹13,583/- per month
(iii)	Compensation after multiplier of 9 is applied	₹13,583x12x9= ₹14,66,964/-
(iv)	Loss of consortium	₹1,00,000/-
(v)	Loss of love and affection (for petitioner No.2 and respondents No.4 to 6)	₹50,000/-
(vi)	Funeral expenses	₹25,000/-
(vii)	Cost of transportation	₹50,000/-
	Total compensation awarded	₹16,91,964/-

It was not disputed that the deceased was a permanent Government employee posted as Store Keeper in the Irrigation Department, Haryana. Age of the deceased was 57 years at the time of accident. His income was assessed at ₹20,374/- per month on the basis of Salary Certificate, Ex.P3. 1/3rd deduction was effected on account of personal expenses. Multiplier of 9 was applied keeping in view with the guidelines laid down by the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77.** Deceased being over 50 years of age, no addition in income was made on account of future prospects.

Learned counsel for the appellant contends that the Tribunal has grossly erred in awarding a sum of ₹16,91,964/- to the claimants on account of death of Hukam Chand @ Hukam Singh. It is vehemently argued that the

claimants have failed to prove that Hukam Chand @ Hukam Singh died on account of the injuries sustained by him in the accident which took place in the intervening night of 07/08.12.2012. Specific reliance is placed on the testimony of PW5 Dr. Amanpreet Singh, Senior Resident PGIMS Rohtak to submit that he was discharged in a satisfactory condition, therefore, his death is not due to the injuries, which he might have sustained in the above said accident.

In the alternate, it is argued that income assessed by the Tribunal is incorrect inasmuch as the deceased was 57 years old at the time of the accident. He would retire on attaining the age of 58, therefore, income assessed should not have been the last drawn salary. Furthermore, transportation charges awarded are highly excessive. As per the case of the claimants themselves, deceased was taken from Jind to PGIMS Rohtak and thereafter to PGI Chandigarh, thus they could not have incurred expense of ₹50,000/- in this process.

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

Vehement argument has been raised to urge that there is no evidence on record to prove Hukam Chand @ Hukam Singh to have lost his life in the accident which occurred on 08.12.2012. Learned counsel refers to the testimony of PW5 Amanpreet Singh, Senior Resident PGIMS, Rohtak who has testified that the patient was admitted to PGIMS Rohtak on 08.12.2012 at 4.30 a.m. and he was discharged on the same day. In cross-examination, this witness deposed that proper treatment was provided by the hospital and patient was discharged in a satisfactory condition. In this situation learned counsel urges that death of Hukam Chand @ Hukam Singh has not occurred due to the injuries sustained by

him in this accident. Furthermore, no post-mortem examination was conducted.

This argument has been considered threadbare by the Tribunal. It is specifically noted that Death Certificate, Ex.P22 has been placed on record which reflects Hukam Chand @ Hukam Singh to have died on 08.12.2012. Evidence on record leaves no doubt about Hukam Chand @ Hukam Singh having received injuries in the accident, in question. He was provided medical treatment in the Government Hospital at Jind. Ex.PX the Medico Legal Report dated 08.12.2012 is on record. PW4 Dr. Shailender Kumar, Medical Officer, Civil Hospital, Yamuna Nagar who treated Hukam Singh at the first instance testified as under:-

“PW-4 Dr.Shailender Kumar, Medical Officer, Civil Hospital,
 Yamuna Nagar

I have brought the original register of Medico Legal Reports of General Hospital, Jind. On 8.12.2012, I was posted as Medical Officer, General Hospital, Jind. I had conducted the Medico Legal Examination of Hukam Singh son of Rati Ram, resident of village Raogarh, P.O. Jyotisar, District Kurukshetra, vide MLR No.SK/17/12. True copy of MLR is Ex.P-6. **There was history of injuries suffered by the patient in Road Side Accident in the area of Near Gatauli Near P.H.C. Julana. The accident was reported to have taken place at about 12.30 AM.** (*Emphasis added*) The following injuries were found on the person of patient:-

- 1) Right elbow was tender and having diffuse swelling
Advised X-Ray and Ortho Surgeon opinion
- 2) Lacerated wound 3cm x 0.5cm in size on right knee joint on medial surface; fresh bleeding was present; Advised X-Ray and Ortho Surgeon Opinion.
- 3) Reddish abrasion 2cm x 0.5cm in size on nasal septum in upper one third. Advised X-Ray and General Surgeon opinion.
- 4) Reddish abrasion 1cm x 0.5cm on forehead in the middle part. Advised X-Ray and General Surgeon opinion.

Any injury detected later would be informed accordingly.

I had sent the Ruqqa regarding the abovesaid accident to the Police Station City Jind, which bears my signatures and copy of the Ruqqa is Ex.P-7. After conducting the M.L.R. and after giving the required treatment, I had referred the patient to PGIMS, Rohtak, for further treatment. Since there was abrasion in the area of forehead, the patient was referred to PGIMS Rohtak, as there was no neurosurgeon at General Hospital, Jind.

XXXXXXXXXX by Sh. Jai Ram Saini, Advocate, counsel for respondents No.1 & 2 and Shri R.K.Singhal, Advocate, counsel for respondent No.3.

I cannot tell as to who had brought this patient to the Hospital. Volunteered several patients were brought to the Hospital due to the injuries suffered in the same accident. The patient was conscious at the time of examination. The patient was examined at 1.20 AM on 8.12.2012. The alleged history of road side accident has been mentioned in the MLR, but the vehicle number and manner of accident have not been mentioned in the MLR. Nothing was charged from the patient for issuing the MLR. Nothing was charged from the patient for issuing the MLR. The age of injured has been mentioned as 60 years in the MLR. I have mentioend the age as told by the patient.”

Apart from the fact that Ruqa, Ex.P7 was sent to Police Station City Jind conveying information regarding the accident, this witness specifically mentions that the patient was referred to PGIMS Rohtak as there was no neurosurgeon at General Hospital, Jind. Damage caused to the injured on the forehead/nasal septum obviously required immediate attention of a

neurosurgeon. At PGIMS Rohtak it is opined that he sustained fracture of the right humerus as well as fracture of the right side of ribs. He was surprisingly not examined by any neurosurgeon despite the fact that the doctor at Jind had specifically referred the patient to PGIMS Rohtak due to non-availability of a neurosurgeon at Jind.

Ex.P8 i.e., the short-stay file of Hukam Chand @ Hukam Singh at Rohtak reflects that x-ray was advised for the reddish abrasion of nasal septum and forehead in the middle part but it was not done. Despite fracture in the right humerus and fracture of the right side of the ribs, he was discharged from PGIMS Rohtak on 08.12.2012 in a 'satisfactory condition'. There is no explanation for non-examination of the deceased by a neurosurgeon despite a specific referral by the doctor at Jind. In this respect, learned Tribunal has observed as under:-

“15. From the statement of PW4, it become absolutely clear that damages received on the forehead in the middle part of the patient required urgent attention. For the remaining injuries, x-ray had been advised. The deceased was taken to PGIMS, Rohtak, where, it was found that he had sustained fracture right humerus and had also suffered fracture in the right side of ribs. Surprisingly, the patient was not referred to Neurosurgeon, though that was the reason for referring him to PGIMS Rohtak by PW4. Without checking the injury on the forehead in the middle part, the patient was discharged from PGIMS, Rohtak and that too in 'satisfactory condition' as stated by PW-2. Ex.P-8 is the Short Stay File of Hukam Chand at PGIMS, Rohtak. A perusal of the same also shows that though the patient had been advised x-ray for the reddish abrasion of nasal septum and forehead in the middle part, but the same was not taken. There is nothing on record to show as to why x-ray of the face and

forehead of the deceased was not done and despite suffering from fractures in the right humerus and ribs on the right side, he was discharged in “satisfactory state”. This clearly indicates that there was lapse on the part of the doctors of PGIMS Rohtak in not providing proper treatment to the patient as a result of which, he was compelled to be taken to PGI, Chandigarh.

16. Maina Devi widow of Hukam Chand alias Hukam Singh has deposed as PW1 that Hukam Singh died while he was being taken to PGI, Chandigarh from PGIMS, Rohtak. In the given circumstances, the postmortem could not be conducted on the body of the deceased and same cannot be considered as a lapse. There is nothing on record to show that Hukam Chand had not died due to injuries received by him in the present accident, but the cause of death was some other subsequent event. The date of accident and death of Hukam Singh are the same. Much time had not elapsed between the accident and the death. No negligence of Hukam Chand or his attendant has been pointed out. Hukam Chand was duly discharged from the General Hospital, Jind and referred to PGIMS, Rohtak. From PGIMS, Rohtak as well Hukam Chand was duly discharged. If proper medical treatment was not provided to Hukam Chand, who was a resident of Kurukshetra, then it was neither his fault nor his attendant can be blamed for any negligence. In the given circumstances, the only plausible conclusion can be that Hukam Chand had died due to injuries received by him in the accident in question.”

It is in this situation that the family of deceased was constrained to take him to PGI Chandigarh but he succumbed to his injuries on the way. In these circumstances, post-mortem was not conducted on the body of deceased. Learned counsel for the appellant is unable to point out any perversity in the

finding arrived at by the learned Tribunal or point out any evidence to the contrary.

It is also to be noted that PW5 Dr. Amanpreet Singh has admitted that the patient was brought to PGIMS Rohtak on 08.12.2012 at 4.30 a.m. on a reference from Government Hospital, Jind. He had come with an alleged history of road side accident. Therefore, it cannot be said that Hukam Chand @ Hukam Singh did not die on account of the injuries suffered by him in the said accident.

There is no dispute that deceased Hukam Chand @ Hukam Singh was a permanent employee of the Government of Haryana posted as a Store Keeper in the Irrigation Department. PW3 Ram Dia, Deputy Superintendent from the office of Executive Engineer, Water Services Division, Kurukshetra has specifically deposed in this respect. This witness has further deposed that the last drawn salary of Hukam Chand @ Hukam Singh was ₹20,374/-. Salary certificate, Ex.P3 proved by him as well as the relevant service record, Ex.P4. Date of birth of Hukam Chand @ Hukam Singh is 02.02.1955 as per the service record.

Contention of learned counsel for the appellant that for the purpose of assessing income of the deceased his last drawn pay should not have been taken into account, is not acceptable. On account of the deceased being slated to retire in the near future cannot be a justification for reducing the income as suggested by learned counsel for the appellant. Learned Tribunal has rightly held that provident fund, pension, insurance or any other monetary benefit which may have been received by the family of the deceased are not to be deducted.

Though the applicability of a split multiplier was not argued

outrightly but learned counsel for the appellant suggests that present is a case where income should be assessed after taking a loss of 50% pension of the deceased and applying a multiplier of 9. It has been held by Hon'ble Supreme Court in **Puttamma and others v. K.L.Narayana Reddy and another, (2013) 15 SCC 45** that in normal circumstances a split multiplier should not be applied. In case, income of the deceased is reduced as suggested it would virtually amount to the same thing. Furthermore, there is nothing on record which suggests that the deceased would be barred from any extension or post-retiral appointments. Therefore, I do not find any merit in this argument which is accordingly rejected.

A consolidated sum of ₹50,000/- has been awarded on account of loss of love and affection towards all the children. The fact that they are not minor does not lend a colour of illegality to this award.

Keeping in view the peculiar facts and circumstances of the case, there is no infirmity, illegality or perversity as sought to be projected by learned counsel for the appellant to warrant any interference for setting aside impugned award or reduction of the amount of compensation awarded by the Tribunal vide award dated 19.05.2015 passed by the Motor Accident Claims Tribunal, Kurukshetra.

Consequently, this appeal is dismissed.

September 8 , 2015.
'om'

(LISA GILL)
JUDGE