

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

**Cross Objection No.91-CII of 2014 &
FAO No.4796 of 2013 (O & M)**

Date of Decision: February 10, 2015

Reliance General Insurance Company Limited

..... APPELLANT(S)

VERSUS

Kunta Devi & others

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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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?

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PRESENT: - Mr. Subhash Goyal, Advocate, for the
appellant – Insurance Company.

Mr. S.S. Sidhu, Advocate, for respondent No.1
– Cross Objector.

None for respondent Nos.2 to 6.

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Jaspal Singh, J

1. Reliance General Insurance Company Limited,
Chandigarh (for short, 'Insurance Company') has preferred this
appeal against award dated July 23, 2013 passed by Motor

Accident Claims Tribunal, Ropar (for brevity, 'Tribunal') whereby an amount of ₹ 8,57,400/- has been awarded to the claimant on account of death of her son Gopal Krishan who succumbed to injuries sustained in an accident involving Truck Tralla bearing registration No.HP-12-C-3181.

2. Shortly put, facts of the case are that on intervening night of June 03, 2012, son of claimant namely Gopal Krishan alongwith Piara Singh hired Mahindra Pick-up vehicle bearing No.HP-12-C-5821 from respondent No.5, Dhani Ram, for purchasing vegetables from Chandigarh vegetable market and to transport/supply them to villages of Nalagarh. Respondent No.4, Vijay Kumar, was driver of aforesaid vehicle. Both Gopal Krishan and Piara Singh were sitting alongwith driver. At about 00:10 AM, when they reached near Police Station, Sadar, Rupnagar, truck tralla No.HP-12C-3181, going ahead of their vehicle, suddenly applied brakes without giving any indication. As a result, Mahindra Pick-up struck against Truck on its rear side. Gopal Krishan and Piara Singh received multiple grievous injuries and died at the spot. FIR No.71 dated June 04, 2012 under Sections 279, 304-A, 427 IPC, was registered in Police Station, City, Rupnagar, regarding accident.

3. Mother of Gopal Krishan (deceased) preferred a claim petition before learned Tribunal, wherein she has been awarded an amount of ₹ 8.57,400/- alongwith interest @ 9%, as compensation on account of death of her son in accident, holding respondent Nos.1 to 3 (appellant and respondent Nos.2 and 3 herein) liable to pay amount of compensation, jointly and severally.

4. Learned counsel for appellant – Insurance Company has vehemently argued that findings recorded by learned Tribunal are erroneous. No accident was taken place with offending truck. Moreover, alleged accident occurred due to rash and negligent driving of Mahindra Pick-up vehicle. It was the duty of Vijay Kumar, driver of Mahindra Pick-up vehicle, to maintain a safe distance from offending truck. Thus, it was due to his carelessness and callousness that alleged accident occurred. Moreso, driver of offending vehicle was not holding valid and effective driving license as well a valid RC and route permit at the time and place of accident. Learned Tribunal has erred in assessing monthly income of deceased at ₹ 6,000/- per month. Further, increase of 30% on his monthly income on account of loss of future prospects was also wrong. Thus, amount awarded on account of compensation is on higher

side. Accordingly, learned counsel has prayed that award passed by learned Tribunal being against the evidence and legal proposition is liable to set aside qua Insurance Company – appellant.

5. During pendency of instant appeal, cross objection has been filed by Kunta Devi, respondent No.1 – claimant, seeking enhancement of compensation awarded by learned Tribunal, on account of death of her son. It has been pleaded that learned Tribunal has wrongly assessed monthly income of deceased to be ₹ 6,000/-, whereas, he was working as vegetable supplier and used to earn ₹ 20,000/- per month. He was unmarried and only bread winner. No amount on account of loss of love & affection has been awarded. Amount awarded on account of funeral expenses is also insufficient. Accordingly, it has been prayed that amount awarded by learned Tribunal deserves to be enhanced.

6. This court has given an anxious thought to aforesaid submissions made by learned counsel for parties and gone through the record available.

7. Let us first take up FAO No.4796 of 2013 through which Insurance Company has sought setting aside of award on the ground that there was no rashness and negligence on the part

of driver of truck tralla, rather, accident occurred due to rashness and negligence on the part of driver of Mahindra Pick-up by Vijay Kumar (respondent No.4). It is amply proved on record that evidence adduced by cross-objector/ claimant that there was rashness and negligence on the part of respondent No.2 – Sukhwinder Singh, while driving truck tralla in question. In order to prove the said fact, statement of PW-2 Vijay Kumar (respondent No.4) is relevant who has clearly deposed on oath that on the night of June 3, 2012, Gopal Krishan and Piara Singh hired Mahindra Pick-up from respondent No.5 – Dhani Ram to purchase and transport vegetables from Chandigarh Vegetable Market for supplying the same at different villages in the area of Nalagarh. Said Pick-up van was being driven by PW-2 Vijay Kumar while Gopal Krishan and Piara Singh, since deceased, were sitting by his side. At about mid-night, truck tralla bearing No.HP-12-C-3181 which was going ahead of their vehicle, suddenly applied its brakes without any signal or indication, due to which, Mahindra Pick-up dashed into truck tralla at its rear side.

8. On the other hand, no evidence was adduced by respondents to rebut testimony of Vijay Kumar. RW-1 Dhani Ram, owner of Mahindra Pick-up, has also clearly deposed that

his van was hired by Gopal Krishan and Piara Singh. Here it would be pertinent to mention that neither owner nor driver of truck tralla appeared in witness box. Due to non-appearance of driver of offending vehicle in witness box, otherwise, an adverse inference is to be drawn against him. Moreover, FIR was also registered against respondent No.2, driver of offending truck tralla and report under Section 173(2) has already been presented in which he was facing trial. Moreover, there is nothing on record to suggest that respondent No.2 (respondent No.1 in claim petition) ever moved any complaint or representation challenging his false implication in criminal case registered against him in respect of accident in question. In such circumstances, no interference of this Court is justified qua findings recorded by learned Tribunal on issue No.1.

9. Now coming to other aspect of case i.e. violation of terms & conditions of insurance policy. No doubt, a plea has been taken by appellant that driver of offending truck tralla was not holding a valid and effective driving license at the time of accident and further that he was not possessing a valid route permit but to the utter surprise, except a bald assertion, there is no evidence to substantiate the same. Truck tralla in question was duly insured with appellant – Insurance Company and no

evidence has been brought on record by that respondent No.2 was not possessing driving license or that vehicle was being driven by him without any route permit. So, this Court does not find any merit in the appeal preferred by Insurance Company and the same stands dismissed.

10. As regards, Cross Objection No.91-CII of 2014 preferred by respondent No.1 – claimant/ cross objector for modification of award by way of enhancement. Learned Tribunal has assessed income of deceased to the tune of ₹ 6,000/- per month which as per contentions raised by learned counsel for Insurance Company is on higher side, whereas, learned counsel for cross objector – claimant has submitted that income assessed by learned Tribunal is inadequate, rather, he was earning ₹ 20,000/- per month being a supplier of vegetables. From the statement of Kunta Devi, mother of deceased; Vijay Kumar, driver of Mahindra Pick-up van; and Dhani Ram, RW-1, owner of Mahindra Pick-up van, it stands clearly proved that deceased was engaged in supply of vegetables. He used to purchase vegetables from Vegetable Market Chandigarh for supplying the same at different villages in the area of Nalagarh (HP). Accident in question occurred in the year 2012 and in those days, even income of a casual

labourer was more than ₹ 6,000/-, whereas, deceased Gopal Krishan was a vegetable seller and used to sell vegetables from Chandigarh to different villages in the area of Nalagarh. So, his income is assessed to ₹ 6,750/- per month.

11. Deceased Gopal Krishan was unmarried and a deduction of 50% of his income is required to be made in consideration of expenses which the victim would have incurred towards maintaining himself had he been alive. So, dependency works out to ₹ 3,375/- per month i.e. $\text{₹ } 3375 \times 12 = \text{₹ } 40,500/-$.

12. Deceased was aged about 16 years of age, whereas, claimant who is mother of deceased, is aged about 43 years. So, taking into consideration their age, a multiplier of 18 was adopted by learned Tribunal which is fully justified. Thus, total amount of compensation on account of loss of dependency works out to $\text{₹ } 40,500 \times 18 = \text{₹ } 7,29,000/-$. In addition to it, claimant is also entitled to ₹ 1 lac on account of loss of love & affection and a sum of ₹ 25,000/- under conventional head. Besides aforesaid amount, a sum of ₹ 5,000/- on account of loss of estate i.e. totaling ₹ 8,59,000/- as against ₹ 8,57,400/- awarded by learned Tribunal.

13. In the light of what has been discussed above, cross objection is partly allowed holding that claimant is entitled to ₹ 8,59,000/- as against a sum of ₹ 8,57,400/- that too alongwith interest @ 9% per annum from the date of institution

of claim petition till actual realization of amount in question and respondent Nos.1 to 3 (in claim petition) i.e. driver, owner and Insurance Company shall be jointly and severally liable to pay amount in question.

14. No order as to costs.

February 10, 2015
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(Jaspal Singh)
Judge