

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

**FAO No.667 of 2012 (O&M).
Date of Decision: 16.03.2016.**

The New India Assurance Company Ltd.Appellant.

VERSUS

Paramjit Kaur and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Neeraj Khanna, Advocate for the appellant.

Mr. Inderjit Sharma, Advocate for respondents No.1 and 2.

SNEH PRASHAR, J.

The appellant-insurance company assailed the award dated 02.09.2011 passed by learned Motor Accident Claims Tribunal, Panchkula (for short, “the Tribunal”) in MACT Case No.42 of 2009 by virtue of which claimants-Paramjit Kaur and others were awarded compensation to the tune of Rs.33,44,050/- on account of death of Gurmeet Singh, husband of claimant No.1, in a motor accident.

On 28.05.2009 Gurmeet Singh, husband of claimant No.1 and father of claimant No.2 was going from village Ghanour, District Patiala to village Nagawan by means of his motorcycle and was hit from the backside by Tata-407 bearing registration No.HR-37-4901 (hereinafter referred to as

the “offending Tata-407) as it was being driven rashly, negligently and in a high speed by Umesh Chand (respondent No.3 herein). Gurmeet Singh suffered multiple serious and grievous injuries. He was taken to Civil Hospital, Rajpura but he succumbed to the injuries on the way.

The deceased was 38 years old and was employed as Head Constable with Punjab Police and was posted at Police Station Ghanour, District Patiala.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) filed by legal heirs (widow and son) of the deceased against driver, owner and insurer of the offending Tata-407 was allowed by learned Tribunal and an amount of Rs.33,44,050/- was awarded as compensation.

Feeling aggrieved, the insurer (appellant-insurance company) preferred the instant appeal.

The submissions made by Mr. Neeraj Khanna, learned counsel for the appellant and Mr. Inderjit Sharma, learned counsel for respondents No.1 and 2 have been heard and record perused.

Learned counsel for the appellant argued that learned Tribunal wrongly held that the accident had taken place due to rash and negligent driving of offending Tata-407 by its driver (respondent No.3). In their pleadings, the version of the claimants with regard to the accident was that offending Tata-407 hit the motorcycle of Gurmeet Singh (deceased) from behind. During evidence, the claimants examined PW3 Gurtej Singh, being an eyewitness of the accident. Deposing through his affidavit Ex.PB, PW3

stated that the offending Tata-407 was coming from the opposite direction when it hit the motorcycle of the deceased. There was a clear contradiction in the statement of the witnesses which proves that no accident as stated by the claimants had taken place.

There is absolutely no merit in the argument of learned counsel for the appellant. There is a wrong conception on his part that PW3 Gurtej Singh, eyewitness of the accident stated that the offending Tata-407 was coming from the opposite direction when it struck into the motorcycle of Gurmeet Singh (deceased). PW3 Gurtej Singh stated that he was sitting as a pillion rider on a motorcycle being driven by Avtar Singh son of Ishwar Singh on 28.05.2009 when they were going from village Nagawan to Kabulpur. At about 10:30 p.m., when they reached near Haddarori of village Salempur they saw a motorcycle coming from the opposite direction. The motorcyclist was driving on his left side of the road at a moderate speed. In the meantime, the offending Tata-407 was seen coming at the back of the motorcycle. Seeing that the offending Tata-407 was being driven rashly, negligently and in a zigzag manner Avtar Singh took their motorcycle on the katcha berm beside the road. The offending Tata-407 without using dipper or blowing horn went on its extreme left side of the road and hit the motorcyclist from backside.

It was crystal clear from the deposition of Gurtej Singh PW3 that the offending Tata-407 was behind the motorcycle of Gurmeet Singh (deceased) when due to its rash and negligent driving it went on the extreme left side of the road and struck into his motorcycle. So there was no

contradiction in the pleadings of the claimants and the statement of the eyewitnesses.

The other argument raised by learned counsel for the appellant was that the Tribunal erred in assessing the income of the deceased as Rs.19,908/- whereas the salary certificate Ex.P1 was proved by PW1 Ram Kumar, Pay Clerk of the office of Superintendent of Police, Patiala and he admitted that the carry home salary of Gurmeet Singh (deceased) was Rs.14,000/- per month. It was the said amount which should have been assessed as monthly income of the deceased. Here again, the argument of learned counsel for the appellant has no force. The carry home salary of the deceased may be Rs.14,000/- but as indicted in the salary certificate Ex.P1 he was drawing a salary of Rs.19,908/-. The amount being paid as grade pay, dearness allowance, ration allowance, medical allowance, house rent etc. was part of the income and no such amount could be deducted from the salary for assessing the monthly income of the deceased.

Thus, the amount awarded by learned Tribunal as compensation is adequate and calls for no modification. There being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

16.03.2016.
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