

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

FAO No.1404 of 2016 (O&M)
Date of Decision: **March 17, 2016**

National Insurance Company Limited ...Appellant

Versus

Shammi Kumari and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.R.C.Gupta, Advocate
for the appellant.

--

HARINDER SINGH SIDHU, J.

On 30.6.2014 at about 10.30 am, the respondents-claimants Shammi Kumari and Ganesh Chand were going on scooter No.PB-10-EK-7824 to Jain Hospital, Sunder Nagar, Ludhiana for treatment. Respondent No.1 was the wife of respondent No. 2. She was pregnant. She was sitting on the pillion seat, while respondent No.2 was driving the scooter. Respondent No.4 Kamaljeet Singh was coming from Jalandhar bye-pass side, who while driving his truck No.HP-33-D-5713 in a rash and negligent manner, hit the scooter. As a result, Shammi Kumari fell down and suffered multiple injuries. Male child of eight months that she was carrying was declared dead on account of injuries.

The respondents filed claim petition seeking compensation on account of the injuries to respondent No.1 and death of their male child in the womb.

On appreciation of evidence, produced before it, the MACT, Ludhiana awarded compensation along with interest as under:-

For the injuries suffered by Shammi Kumari – respondent No.1:

<i>Compensation Head</i>	<i>Amount</i>
For inconvenience and pain	25,000/-
Expenses for medical treatment	7,20,589/-
Expenses for conveyance and special diet	10,000/-
Attendant Charges	10,000/-
For disability and future loss of earnings	10,80,000/-
Loss of amenities of life	25,000/-
<i>TOTAL COMPENSATION</i>	18,70,589/-

On account of the death of unborn child, the Tribunal awarded a sum of Rs.1,80,000/- to the claimants in equal shares.

Challenging the award, Ld. Counsel for the appellant – Insurance Company has questioned the finding of the Tribunal holding the driver of the offending truck No.HP-33-D-5713 negligent for causing the accident. He has also contended that the Tribunal has erred in assessing the 60% disability as 100% functional disability without any evidence in support thereof.

The two issues in this regard as framed by the Tribunal were as under:

“1. Whether claimant suffered injuries on account of the accident that took place on 30.16.2014 on account of Motor Vehicle accident caused by respondent no.1 while driving a offending vehicle LPT 1613 Truck bearing NO.HP-33-D-5713 in a rash and negligent manner? OPA

2(a) Whether the claimant is entitled to compensation? If so, to what extent and from whom? OPP”

To prove issue No.1 regarding the negligence on the part of the driver of the offending truck, Ganesh Chand, husband of the injured Shammi Kumari deposed that on 30.6.2014 at 10.30 am he along with his

wife who was pregnant, was going to Jain Hospital, Sunder Nagar, Ludhiana for getting her Medical treatment on scooter No.PB-10-EK-7824. He was driving the scooter on his side at very slow speed. Suddenly, the offending truck came from Jalandhar bye-pass side. It was being driven rashly and negligently by its driver Kamaljeet Singh and due to this rash and negligent driving, the offending truck struck with his scooter. As a result of the accident, Shammi Kumari fell down and received multiple injuries and became unconscious. She was immediately taken to Mohan Dai Oswal Hospital from where, she was referred to D.M.C.Hospital, Ludhiana. This witness specifically stated that the accident took place on account of rash and negligent driving of the offending truck by respondent No.4 – Kamaljeet Singh. That apart, FIR No.186 dated 1.7.2014 under Sections 304-A, etc. IPC was also registered in Police Station Jodhewal regarding the accident against Kamaljeet Singh, driver of the offending truck.

This clearly establishes that the accident was caused due to the rash and negligent driving by the driver of the Truck and I find no error in the findings of the Tribunal.

Coming to the next issue regarding the assessment of loss caused to the injured, it has been deposed by respondent No.2 appearing as CW2 that his wife (respondent No.1) was a National player in Softball. He proved certificates in this regard. He deposed that she is graduate with degree in Physical Education from Punjab University, Chandigarh and had worked as Physical Education teacher from March, 2003 to July 2003 in Brahm Rishi Bawra Shiksha Niketan School, Madhopuri, Goushala Road, Ludhiana. She had also worked as Physical Education Mistress from 1.9.2000 to 14.7.2001 at Ritambhra Public School, Sunder Nagar,

Ludhiana and Physical Education Teacher from 16.7.1997 to 13.8.1999 at Guru Gobind Nagar Senior Secondary School, Ludhiana. At the time of accident, she was working as a teacher at Ryan International School, Ludhiana and was earning Rs.10,000/- per month. Because of the 60% physical disability, she would not be able to work as Physical Education Teacher anywhere. She has suffered shortening of Left Lower Limb by two and half inches. Resultantly, she can never sit cross-legged, nor climb stairs. The disability suffered by her is of such a nature that limitation of movements will be there and she will have difficulty in standing, walking and squatting, meaning thereby, that she would not be able to work as Physical Instructor in future.

It was In the light of this as also the opinion of the doctor that the Tribunal rightly assessed the 60% physical disability as 100% functional disability as both her physical and mental capacity was diminished, she also suffered from uncontrolled seizures despite adequate medication, leaving her with virtually a nil chance of securing employment in the future.

I do not find any ground to interfere in the findings returned by the Tribunal on both these issues.

Thus, the appeal is dismissed.

March 17, 2015

(HARINDER SINGH SIDHU)
JUDGE

gian