

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

FAO No.1950 of 2016(O&M)

Date of Decision: May 11, 2016

The Oriental Insurance Company Ltd.

...Appellant

Versus

Natasha Sharma and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Ms. Neeraj Chandel, Advocate for
the appellant- Insurance Company.

HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (The Oriental Insurance Company Limited) against the Award dated 14.09.2015 passed by the Motor Accident Claims Tribunal, Moga (for short 'the Tribunal'), whereby, a compensation of Rs.9,33,200/- along with interest was awarded for the death of Sanjiv Kumar in a vehicular accident.

Brief facts of the case are that on 15.09.2013, Sanjiv Kumar (deceased) was coming from Chandigarh to Bathinda in bus bearing No.PB-11/AK-9904. Paramjit Sharma-brother of deceased was also travelling in the said bus. On the way, some defect occurred in the engine of bus, due to which, all the passengers including Sanjiv Kumar alighted from the bus. While Sanjiv Kumar was going towards the chowk for arranging an alternative vehicle, a truck bearing registration No.PB-13/GA-9962 driven by respondent No.5 rashly, negligently and with high speed came from Barnala side and hit the bus due to which, Sanjiv Kumar was crushed under

the bus, which later struck a tree on other side of the road. Sanjiv Kumar died on the spot. FIR No.129 dated 16.09.2013 under Sections 304-A, etc. IPC was registered at Police Station Nathan on the statement of Paramjit Singh, brother of deceased.

The dependants of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 35 years and earning Rs.35,000/- per month as he was holding the post of Area Manager in a Network company.

Respondent No.5 and 6 (driver and owner of the offending truck) filed written statement pleading that there was no fault on the part of the driver of the truck in causing the accident. It was also pleaded that the accident occurred because the driver of the bus lost control over it and it struck into the tree standing on the other side of the road.

The insurer of the offending truck in its written statement also took the similar stand.

On pleading of the parties the following issues were framed.

- “1. Whether Sanjiv Kumar died in the motor vehicular accident caused due to rash and negligent driving of truck bearing No. RJ13/GA-9962 by Angrej Singh, respondent No. 1, on 15.09.2013 in the area of Bhucho Kalan? OPP*
- 2. Whether the accident occurred due to rash and negligent driving of bus No. PB-11/AK-9904 by respondent No. 4 Hari Pal and it is a case of contributory negligent? OPR-1 and 2.*
- 3. If issue No. 1 is proved, whether claimants are entitled to claim compensation. If so, to what extent and from whom? OPA.*
- 4. Whether the claim petition is not maintainable in the present form? OPR-1 and 6.*

5. *Whether the claim petition is false and frivolous and result of collusion between claimants and respondent No.1 and 2, 4 to 6? OPR-3*

6. *Whether the bus in question was not insured with Natasha Sharma Versus Angrej Singh respondent No. 6 and respondent No.1 and respondent No. 4 were not holding valid and effective driving licence at the time of alleged accident?OPR-6*

7. *Relief.”*

The Tribunal assessed the income of the deceased Sanjiv Kumar at Rs.7000/- and deducted 1/3rd toward his personal and living expenses. The monthly loss of dependency was rounded off at Rs.4600/-. Considering the age of the deceased (35 years) multiplier of 16 was applied. Besides a sum of Rs.25000/-, each, was awarded for 'loss of estate, love and affection' and 'funeral expenses'.

Challenging the impugned award, Ld. counsel for the appellant-Insurance Company has contended that the Tribunal fell in error by not treating it to be a case of contributory negligence. It is also contended that Angrej Singh- the driver of the offending truck was not holding a valid driving licence and further that income of the deceased was also assessed at a higher rate of Rs.7000/-per month.

Eye-witness Paramjit Sharma (PW1) deposed before the Tribunal that the deceased was travelling in the offending bus. At about 10.45 pm, when the bus reached at Bhucho Chowk, it suddenly stopped due to some mechanical defect in the engine. All the passengers got down from the bus and the deceased went towards the Chowk to arrange an alternative

vehicle. He further stated that it was at that time that the offending truck driven by respondent-Angrej Singh came at a high speed from Barnala side and struck against the bus. His testimony also reveals that the truck hit the bus so forcefully that the stationary bus came into motion and after crossing the divider, it struck against a tree on the other side of the road. In this process, Sanjiv Kumar who was crossing the road was crushed under the tyre of the bus. PW1 specifically stated that the accident took place due to rash and negligent driving of the truck.

FIR (Exhibit C1) was registered on the same day against Angrej Singh, driver of the offending truck. Immediate version of the accident as recorded in the FIR reads as under:

“At 10.45 p.m when the bus reached at Bhucho Kanchian Chowk, the bus developed some mechanical defect. Therefore, all the passengers got down from the bus. His brother Sanjiv Kumar went out to arrange for some other vehicle. At that time, one truck came at high speed from Barnala side and struck with their bus. The truck driver without giving any horn or indicator brought the truck towards left side and hit the stationary bus. The bus ran over his brother Sanjiv Kumar, who was crushed under the bus. The truck which hit the bus was bearing No. RJ-31/GA-9962. The truck was loaded with steel-rods. The driver left the truck and ran away from the spot.”

From the above evidence on record, the Ld. Tribunal rightly concluded that the offending truck had hit the stationary bus in such a manner that no fault could be attributed to the driver of the bus. There was no fault of bus driver as it was stationary on the left side of the road. Thus, the question of contributory negligence does not arise.

So far as the contention regarding not holding of valid driving licence by Angrej Singh at the time of accident is concerned, it also has no merit. Driving licence of Angrej Singh was placed on record as Exhibit R1, a

perusal of which revealed that it was renewed up to 30.05.2014 and it also carried necessary endorsement for driving HTV. The accident had taken place on 15.9.2013 and on that day the licence was valid for driving HTV.

To prove the income, the claimants-respondents placed on record salary certificate of Sanjiv Kumar as Ex.P3, detailed list of bonus issued by M/s Forever Living Imports(India) Private Limited as Ex.P5, one bonus cheque of Rs.2,861.89 issued in favour of Sanjiv Kumar as Ex.P8, bonus details of employees as Ex.P9, bonus cheque of Rs.7,316.36 issued in favour of Sanjiv Kumar as Ex.P12, appointment letter as Ex.P13 and salary certificate as Ex.P13/A. The widow of the deceased appeared in the witness box and claimed that her husband was earning Rs.35,000/- per month. However, since the claimants could not examine the employer of the deceased or owner of the concerned company, with which the deceased was employed, therefore considering the salary certificate, the Tribunal assessed the monthly income of the deceased at Rs.7000/- per month.

Accordingly, the finding of the Tribunal regarding the income of the deceased is based upon the documentary evidence as also the oral evidence of Natasha Sharma and Paramjit Sharma, widow and brother of the deceased, which needs no interference. Thus, the argument is rejected.

No other point was raised.

Appeal is dismissed.

May 11, 2016

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**(HARINDER SINGH SIDHU)
JUDGE**