

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

FAO No.2605 of 2016(O&M)

Date of Decision: May 05, 2016

The New India Assurance Company Ltd.

...Appellant

Versus

Rambir and others

...Respondents

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

Present: Mr. S.S. Sidhu, Advocate for
the appellant – Insurance Company.

HARINDER SINGH SIDHU, J.

This appeal has been filed by New India Assurance Co. Ltd. against the award dated 03.02.2016 of Motor Accident Claim Tribunal, Gurgaon (for short 'the Tribunal'), whereby, compensation of Rs.18,06,618/- along with interest was awarded to respondent-claimants for the death of Rambir Singh due to injuries suffered in a vehicular accident.

Brief facts, are that on 17.8.2012 Rambir Singh alongwith Sanjiv @ Sanjay was returning from village Basai on his bicycle. When they reached at Sector 9-A T Point, Gurgaon, then a Haryana Roadways bus bearing No.HR-38L-7813 being driven rashly and negligently by respondent No.2 came and hit Rambir Singh, as a result of which he sustained grievous injuries on his head. Due to the head injury, he remained admitted in Medicity Hospital, Gurgaon from 17.08.2012 to 17.09.2012 and from 21.06.2013 to 22.06.2013. However, Rambir Singh breathed his last on

06.02.2015 while under treatment.

During his life time, while he was under treatment for the accidental injuries, Rambir Singh, filed claim petition under section 166 of Motor Vehicle Act, 1988 for grant of compensation for the injuries suffered by him in the accident. However, after his death during the pendency of the claim petition, his legal representatives were brought on record and they claimed compensation on account of his death arising out of the accident.

Respondent No.3-General Manager Haryana Roadways, filed written statement denying the accident.

The appellant - Insurance Company filed its separate written statement and took objection that at the time of the accident the driver of the offending vehicle was not holding a valid and effective driving licence and further it pleaded that the amount claimed as compensation was highly exaggerated.

On pleading of the parties following issues were framed:-

1. *“Whether petitioner Rambir sustained injuries in road side accident on 17.8.2012 (wrongly written in the Award as ‘08.02.2013’) by way of rash and negligent driving of bus No. HR-38L-7813 being driven by respondent No. 1?OPP*
2. *If issue No.1 is proved in favour of petitioners, then as to what amount of compensation and from whom out of respondents, the petitioners are entitled to receive the same?OPP*
3. *Whether respondent No. 1 was not holding the valid and effective driving licence on the date of alleged accident?OPR*
4. *Whether the petition has been filed by collusion of petitioners and respondents No.1 and 2?OPR*
5. *Whether respondents No.1 and 2 did not comply with the terms and*

conditions of insurance policy, as respondents No.1 and 2 have no valid route permit to apply the same?OPR

6. Relief.”

On appreciation of evidence, issue No.1 was decided in favour of the claimants and it was held that accident took place due to rash and negligent driving of the bus. However, in the absence of any documentary proof, the Tribunal assessed the income of the deceased at Rs.6000/- per month treating him as casual labourer and awarded compensation to the legal representatives of Rambir Singh for his death as under:-

Heads of claim	Amount (in Rs.)
Income of deceased per month	Rs.6000/-
Add 15% for the loss of future income	Rs.900/-
Total	Rs.6900/-
Less 1/3 rd (deducted for personal expenses of deceased)	Rs.2300/-
Net	Rs.4600/-
Multiplier	9
Loss of dependency (4600x9x12)	Rs.496800/-
Loss of consortium to widow, petitioner No. 1	Rs.100000/-
Loss of love and affection and guidance to minor children	Rs.100000/-
Funeral expenses and transportation	Rs.45000/-
Loss of current income (6000x30 months)	Rs.180000/-
Medical expenses	Rs.884818/-
Total	Rs.18,06,618/-

The appellant - Insurance company was held liable to pay the compensation amount.

While challenging the award Ld. Counsel for insurance company-appellant has, urged two grounds:-

- (i) That the claim petition was filed by the injured himself (since deceased) during his life time for claiming compensation for the injuries suffered by him in the accident on 17.08.2012, therefore, the compensation is to be awarded for the injuries only, and
- (ii) that the deceased died due to shock and septicaemia of pre-existing cardiac/ coronary/ artery/ pulmonary disease. There being no evidence to link the death to the injuries received by the claimant in the alleged accident, the claimants are not entitled to any compensation for his death.

In respect of the first contention of the Ld. Counsel, indeed, the claim petition was filed by Rambir Singh during his life time while he was under treatment for the injuries suffered in the accident. The claim petition was filed through his wife as he was unable to speak being in a vegetative state. However, during the pendency of the petition, he died due to the injuries sustained and, thereafter, his legal representatives were brought on record and they pursued the claim petition for compensation for his death due to accidental injuries.

Under Section 166 of the Motor Vehicles Act an application for compensation may be made by the person who has sustained the injury or where death has resulted from the accident, by all or any of the legal representatives of the deceased. Initially, the claim for compensation was filed on behalf of the injured. After this death, his legal representatives

were entitled to file a claim for compensation on the ground that the death had resulted from the accident. Whether they filed a separate claim petition or prosecuted the original petition claiming compensation for the death instead of for injuries to the deceased, is of no consequence because undeniably they had an independent right to claim compensation on account of his death. I see no illegality in the approach of the Tribunal.

Regarding the second argument of the Ld. Counsel for the appellant, it only needs to be mentioned that the Tribunal has discussed the injuries sustained by the deceased, his record of hospitalization, surgeries undergone and the disability suffered by him.

Dr. Shashi Kataria, Deputy Civil Surgeon, Civil Hospital Gurgaon, who appeared before the Tribunal as PW5, along with other doctors examined the deceased on 4.2.2015 i.e. two days prior to his death for assessing the disability suffered by him. On the basis of the report provided by the PGIMS, Rohtak, the disability was assessed at 100% vide report Ex.PW5/A, proved on record by Dr.Shashi Kataria. Medical record Ex.P35 revealed that the deceased remained under treatment in the Medicity Hospital, Gurgaon from 17.8.2012 to 17.9.2012 and then from 21.6.2013 to 22.6.2013. He had also undergone a brain surgery, which fact reflects his physical condition as also the impact of the accidental head injury on his person. The claimants also examined Ramesh Kumar as PW1, who is Senior Billing Executive of the Medicity Hospital, Gurgaon, and he proved the bills (Ex.PW4/B) worth Rs.8,84,818/- of the said hospital. Further, proved were the chemist bills (Ex.P12 to P34) and bills (Ex.P8 and

P9) of diagnostic centre, amounting to Rs.29,678/-.

It has come on record that due to the accidental injuries, Rambir Singh was rendered 100% disabled. His physical condition is clear from the fact that the petition for compensation for injuries suffered by him was filed through his wife as he was unable to speak. He remained in a vegetative state till he died on 6.2.2015. He remained under treatment till his death on account of the injuries suffered by him in the accident on 17.8.2012. The Post Mortem Report revealed that the cause of the death of Rambir Singh was shock and septicaemia of pre-existing cardiac/ coronary/ artery/ pulmonary disease. Thus there is no reason to doubt that the death of Rambir Singh was on account of the injuries suffered by him in the vehicular accident in question.

Accordingly, the contentions raised on behalf of the appellant – insurer are devoid of merit.

Appeal dismissed.

May 05, 2016

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether speaking/reasoned - Yes / No

Whether reportable - Yes / No