

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

**FAO No.4048 of 2016 (O&M)
Date of Decision: August 31, 2016.**

New India Assurance Company Ltd.

.....APPELLANT(s).

VERSUS

Kamla Devi and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajesh K. Sharma, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal by New India Assurance Company Ltd. against the award dated 30.04.2016 passed by Motor Accident Claims Tribunal, Karnal (later referred to as 'the Tribunal') allowing compensation to the claimants-respondents No.1 to 4 on account of death of Sewa Ram in a motor vehicle accident on 19.09.2014 due to rash and negligent driving of truck bearing Registration No.HP72-2033 (later referred to as 'the offending vehicle').

2. Since the appellant-insurance company has challenged the impugned award on two counts; firstly, the Tribunal ignored the report of Deputy Superintendent of Police finding the version of accident as given in FIR as false and secondly, the income of the deceased assessed by the Tribunal as ₹8,100/-, is on higher side, the detailed facts of the case are being skipped for the sake of brevity.

3. On appraisal of evidence on record, the Tribunal reached the conclusion that the accident took place due to rash and negligent driving of the offending vehicle by respondent No.1 and awarded compensation of ₹11,21,200/- to the claimants, which was computed as follows:-

1. Name of the deceased : Sewa Ram
2. Age of the deceased : 45 years
3. Monthly income : ₹8100/- per month
(as per Punjab Govt. FD letter No. 7084-F-41/6057(Genl) dated 21st November 1941, for the year 2014-15.
4. Deduction towards personal expenses : 1/3rd (8100-2700=5400)
5. Multiplier applied : 14 (5400X12X14)
6. Loss of dependency : ₹9,07,200/-
7. Loss of consortium : ₹1,00,000/-
8. Loss of love and affection for daughter of the deceased : ₹1,00,000/-
9. Transportation expenses : ₹3,000/-
10. Funeral expenses : ₹11,000/-

4. Learned counsel for the appellant has argued that the Tribunal ignored the report made by Deputy Superintendent of Police regarding the accident, wherein he concluded that no such accident took place with the offending vehicle. He has further argued that the Tribunal assessed income of the deceased as ₹8100/- per month, while as per the minimum wages prescribed by the Labour Commissioner, Haryana, wages of unskilled worker is ₹5639.50p per month.

5. On perusal of the award, I find that the Tribunal has taken note of the report of Deputy Superintendent of Police who exonerated the driver

and offending vehicle from the accident by observing that the accident had

not taken place with the offending vehicle. The reason for his reaching the conclusion is that time of accident was mentioned in the FIR is 7.00 p.m. while of the offending vehicle has crossed the toll check point at 7.26 p.m and was not near place of accident.

6. Admittedly, the police has presented challan against the driver of the offending vehicle who is facing proceedings before the criminal Court. No evidence was produced that on the basis of the report of Deputy Superintendent of police, any cancellation report was submitted or accepted by the Court. EHC Pardeep who appeared as RW1 placed on record copy of the report prepared by Deputy Superintendent of Police as Ex.RW1/A. The Tribunal has observed that this report is not substantiated by any evidence. The difference of timing of 26 minutes which has been made the basis of the report, is not material because at such a crucial period, a person whose father has died in an accident, cannot be expected to state the time like a computer machine. While going through the reasoning given by the Tribunal, I find that there exist more reasons to discard the report of the Deputy Superintendent of Police. Firstly, the concerned officer has not appeared as witness to prove his report so as to provide opportunity to the claimants to shatter the same. Secondly, there is no evidence that this report was made part of the final report under Section 173 Cr.P.C. submitted in the Court or was produced before the Court at any later point of time. Thirdly, as per report of Mechanic dated 20.09.2014 which is on file supplied by learned counsel for the appellant during the course of arguments, the offending vehicle was found in damaged condition which proved that it had met with an accident. Fourthly, the offending vehicle is owned by

respondent No.2, who is resident of Shimla and respondent No.1, driver is resident of Mandi (H.P.) which are far away from the place of occurrence and claimants could have no reason to falsely implicate respondents No.1 and 2 in this case. The onus was heavy on the insurance company to prove the report by leading cogent and convincing evidence, which it has failed to bring on record. The Tribunal has rightly discarded this report and on appraisal of the evidence has reached the conclusion that the accident took place due to rash and negligent driving of respondent No.1.

7. It is a well-known fact that in the year 2014, even a daily wager was earning not less than ₹300/- per day. The labour is not available in the market at the rate fixed by the labour commissioner. Claimants have alleged that the deceased was working as foreman on harvesting combine which was owned by Subhash Chander, resident of Bada Gaon, District Karnal. He was also taking care of agricultural farm of Subhash Chander and getting salary of ₹20,000/- per month plus other benefits, such as food-grains, daily allowance, travelling allowance etc. Subhash Chander appeared as PW3 and has stated that the deceased was an expert combine mechanic and was working as foreman on his combine and was getting ₹20,000/- per month as salary. He had also produced registration certificate of his combine. Though he did not produce any record regarding the salary of the deceased, still keeping in view the fact that at the time of accident, the deceased was on a motorcycle which shows that his status was better than a casual labourer.

8. Keeping in view all the above facts, I do not find income of the deceased assessed by the Tribunal as ₹8,100/- per month on higher side.

The argument of learned counsel for the appellant to this effect is also discarded.

9. No other point has been argued.

10. This appeal has no merits.

Dismissed.

August 31, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No