

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.5663 of 2016 (O&M)

Date of Decision: 09.11.2016

National Insurance Co. Ltd.

... Appellant

Vs.

Kanhaya Jee Pandey and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Naveen Kapoor, Advocate
for the appellant.

Amol Rattan Singh, J.

1. This is an appeal by the insurance company that had been arrayed as respondent no.3 before the learned Motor Accident Claims Tribunal, Mewat, by the claimants who were seeking compensation for the unfortunate death of Avinash, in a motor vehicle accident on 06.02.2015.

2. The facts, as taken from the impugned Award of the Tribunal, are that the deceased was going with one Dinesh Kumar on a motor cycle bearing registration no.HR76-B-3301, with the vehicle being driven by the aforesaid Dinesh Kumar.

It was contended that the motor cycle was driven at a slow speed on the left side of the road, but when it reached near Bilaspur chowk, a vehicle bearing registration no.UP-41T-2829 came from the side of Gurgaon, driven by respondent no.4 herein (the first respondent before the Tribunal) allegedly in a rash and negligent manner and which hit the motor cycle from behind. Dinesh Kumar and Avinash are stated to have fallen

down with Avinash unfortunately having died on the spot. The driver, i.e.

present respondent no.4, is stated to have run away, leaving the vehicle (a truck) behind.

A post-mortem examination was conducted and an FIR was also registered against respondent no.4, in which he was stated to be facing trial even at the time of decision of the claim petition.

3. It was contended by the claimants (respondents no.1 to 3) that the deceased was only 24 years of age, was hale and hearty and was posted as a senior assistant with M/s. A.S.K. HR Solution Pvt.Ltd, in the IMT Manesar, Gurgaon, earning ₹15,526/-.

It was further contended that a sum of ₹1 lac was spent on the transportation of the body and on conducting the last rites of the deceased.

4. Notice of the claim petition having been served upon the respondent, the driver and owner of the vehicle (respondents no.4 & 5 herein), did not appear before the Tribunal and were proceeded against ex-parte. The present appellant (respondent no.3 before the Tribunal), being the insurer of the aforesaid truck, appeared and filed its written statement taking preliminary objections with regard to lack of cause of action, jurisdiction etc.

On merits, the accident itself was denied by the present appellant, further pleading that the driver was not holding a valid and effective driving licence and in any case, that the accident took place due to the rash and negligent driving of the motor cycle by Dinesh Kumar.

5. On the aforesaid pleadings, the following issues were framed by the Tribunal:-

“1. Whether the accident was caused by respondent no.1 while driving the vehicle no.UP-41T-2829 rashly and negligently and caused death of Avinash son of

petitioners no.1 & 2 and brother of petitioner no.3?OPP

2. If issue no.1 is proved, whether petitioner is entitled for compensation, if so of to what effect and from whom?OPP

3. Whether the respondent no.2 has contravened the terms and conditions of insurance policy?OPR

4. Relief.”

6. The claimants having examined the first claimant, i.e. the father of the deceased and one Sandeep Kumar, a senior executive in the company where the deceased was working, as also the aforesaid Dinesh Kumar, they also tendered various documents in evidence.

7. On the other hand, the appellant-insurance company did not lead any evidence.

8. Upon appraising the evidence led before it, the learned Tribunal came to the conclusion, from a perusal of the report filed under Section 173 Cr.P.C., the charge sheet issued by the trial Court seized of criminal proceedings, and a copy of the FIR, as also from the deposition of Dinesh Kumar, that it was actually the driver of the truck who was responsible for causing the accident.

9. Thereafter, as regards the compensation to be paid, it was found that PW2, i.e. the senior executive from the company where the deceased worked, had duly testified that the deceased was earning ₹14,547/- per month, as per the salary certificate duly proved.

To that sum the Tribunal, relying upon ***Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR(Civil) 171***, held that the claimants were also entitled to loss of future prospects of an increased income to the deceased, to the extent of 50% of his proved income, the deceased being

below 30 years of age. Consequently the income of the deceased, including loss of future prospects of an increased income, was assessed to be ₹2180/- per month.

He being a bachelor, it was held that the third claimant, i.e. the brother of the deceased, not being dependent upon him, (with the father alive), deduction towards the personal expenses of the deceased from his monthly income, was to be taken as 50% of such income.

Consequently holding as above, the loss of dependent income to the claimants, was held to be ₹10,910/- per month (₹14,547/- + ₹7273 – 50%).

The annual loss of income to the claimants therefore being ₹1,30,920/-, a multiplier of 18 was applied to that sum, thereby coming to a total loss of income of ₹23,56,560/-.

₹1 lac was awarded by way of loss of love and affection to the mother of the deceased and another ₹25,000/- towards transportation and funeral expenses. Hence, a total compensation of ₹24,81,561/- was awarded to the claimants.

10. The “Offending vehicle” having been found to be insured with the present appellant and no evidence having been led that it was being driven by respondent no.4 herein without a valid driving licence, the appellant company was held liable to pay the compensation awarded, which also carried an interest of 8% per annum on it, running from the date of the institution of the claim petition, till the realisation of the amount.

Consequently, the insurance company, being aggrieved of the aforesaid Award, is in appeal against it before this Court.

11. Learned counsel for the appellant submits that only a salary

certificate of the deceased having been led by way of evidence by the respondents-claimants, that he was receiving a salary of Rs.14547/- per month from one M/s ASK HR Solutions Pvt. Ltd., IMT, Manesar, Gurgaon, would not prove that he was in permanent employment.

The contention therefore is that loss of future prospects of an increased income to the family of the deceased, i.e. the claimants, has been wrongly awarded by the Tribunal in the impugned Award, especially in view of the fact that the issue is subjudice before the hon'ble Supreme Court, having been referred to a larger Bench in ***National Insurance Co. Vs. Pushpa and others, (2015) 9 SCC 166.***

12. Having considered the aforesaid argument, I find myself unable to agree with the contention of learned counsel, in view of the fact that simply because the deceased was working in a private limited company and was not in Government employment, it cannot be held that he was not in permanent employment.

Undoubtedly, he was drawing a salary which was duly proved and accepted as such by the Tribunal, which of course is not doubted even by the appellant.

Hence, simply to contend that because it was a private limited company, there was no surety of his continuance in employment, would actually amount to saying that the only permanent employment is that with Government, where also, actually, there is no guarantee of continuous permanent employment, on abolition of posts, disciplinary proceedings taking place against the employee, etc.

13. Other than that, secondly, there would normally be an increase in the income even by way of inflation, and though in the case of a daily

wager, this Court, in view of the reference made to a larger Bench of the hon'ble Supreme Court, has been staying the disbursement of the component of compensation as is due towards the loss of future prospects of an increased income, in the present case, the deceased admittedly being in employment on a salary with a private limited company, I see no reason to stay such disbursement.

Learned counsel, on query by this Court, submitted that the aforesaid is the only ground of challenge in this appeal.

17. Consequently, finding no merit in the argument, the appeal is dismissed in limine, but with no order as to costs.

November 09, 2016
davinder/vcgarg

(AMOL RATTAN SINGH)
JUDGE

1. Whether order reportable?	Yes
2. Whether order speaking/reasoned?	Yes