

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

**FAO No.6035 of 2010
Date of decision: 31.08.2017**

Kavita Singh and others

....Appellants

Versus

M/s Achal Paper Industries Ltd. and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Manish Kumar Singla, Advocate,
for the appellants.

None for respondent No.2-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed against the Award dated 11.11.2009 passed by Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as 'the Tribunal'), whereby claimed petition under Section 163-A of the Motor Vehicle Act (hereinafter referred to as 'the Act') filed by claimant-appellants on account of death of Vijay Singh in a motor vehicular accident, has been dismissed. Appellant No.1 is widow and appellant Nos.2 & 3 are children of deceased Vijay Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 04.12.2005, Vijay Singh (since deceased) along with Mukesh Sharma, General Manager and Sanjay Goyal, Chartered Account of respondent No.1, had been coming from Delhi towards Nabha in a car (Skoda) bearing registration No.CH-03-K-3847.

The said car was being driven by Sandeep Singh (driver of respondent No.1.

At about 6.00 A.M. on 05.12.2005, when they reached near village

Ghamroda on Nabha-Patiala Road, suddenly a stray cattle came on the road and in order to avert the accident, driver of the car had lost balance of the car, as a result of which, the car hit against a tree on the right side of the road. Due to this accident, Vijay Singh died at the spot and other occupants of the car sustained injuries. They were taken to Civil Hospital, Nabha, from where the driver of the car was referred to Government Rajindra Hospital, Patiala, where he succumbed to the injuries. With regard to the accident, DDR No.10 dated 05.12.2005 was registered at Police Station, Sadar, Nabha. Consequently, the claimants i.e. appellants filed a claim petition before the Tribunal.

Upon notice, respondent No.1 appeared and filed written statement by taking preliminary objections with regard to maintainability of the petition etc. It was admitted that Vijay Singh had died as a result of the accident. Ultimately, prayer for dismissal of the petition was made.

Insurance Company-respondent No.2 filed a separate written statement admitting that car bearing registration No.CH-03-K-3847 was insured with it. However, it was stated that the insurance company was not liable to pay any compensation because the claimants had already received compensation to the tune of Rs.2,95,630/- vide order dated 24.10.2005 from the Workmen's Compensation Commissioner and Assistant Labour Commissioner, Patiala, in case No. 3E of 2006. It was further stated that driver of the car namely Sandeep Singh was not holding a valid and effective driving licence at the time of accident, therefore, there was a breach in the terms and conditions of the insurance policy.

From the pleadings of the parties, following issues were framed by the Tribunal:-

1. Whether the deceased Vijay Singh died in a motor vehicle accident on 05.12.2005 in the area of village Ghamrauda situate on Nabha-Patiala road, as alleged? OPP
2. Whether the petitioners are entitled to claim any compensation, if so, to what extent and from whom? OPP
3. Whether Sandeep Singh, driver of car make Skoda bearing No. CH-03-K-3847 in which the deceased Vijay was travelling, was not holding valid and effective driving licence, if so, to what effect? OPR-2
4. Whether income of deceased was more than Rs.40,000/- per annum and therefore, claim petition under Section 163-A of Motor Vehicle Act is not maintainable? OPR-2
5. Relief.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that before filing of the petition under Section 163-A of the Act, claimants-appellants had already received compensation to the tune of Rs.2,96,630/- from the Commissioner, Workmen's Compensation under the Workmen's Compensation Act, 1923. It was further observed that before filing the application, Kavita Singh-appellant No.1 had sworn an affidavit, Ex.R3, that she would not sue for any other claim regarding the death of her husband in any Court or in MACT or in any department against M/s Achal Paper Industries Limited or United Indian Insurance Company, Nabha. Therefore, the claimants were not entitled to claim compensation under the MACT Act. With these observations, claim petition filed by claimant-appellants has been dismissed by the Tribunal.

Learned counsel for the appellants has argued that in the

present case, the claimants had never filed any petition under the Workmen's Compensation Act, 1923 seeking compensation on account of death of deceased in a roadside accident. Rather, they had simply moved an application to collect the amount of compensation, which was deposited by the employer and the disbursement of the said amount could not be treated as claim instituted with the meaning of Section 3 (5) of the Act of 1923. Therefore, they had a remedy to file a claim petition under the Motor Vehicle Act, 1988. He has referred to the judgment passed by this Court in **Sukhwinder Kaur and others vs. The Dabwali Transport Company Private Limited, Bhatinda through its Managing Director and others,** 2009 (1) AICJ 355 in support of his arguments that in case compensation under the Workman Compensation Act is granted without there being any petition for the same by the legal heirs of the deceased, then those legal heirs would still have remedy to claim compensation under the Motor Vehicle Act.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. This aspect has been considered by Hon'ble the Supreme Court in **Oriental Insurance Co. Ltd. Vs. Dyamavva and others,** 2013 (2) RCR (Civil), 384, wherein it has been held that if, procedure under Section 8 of the Workmens Compensation Act, 1923 was initiated at the behest of the employer suo motu, it could not be considered as an exercise of option by the claimants to seek compensation under the provisions of the Act.

In the facts of the present case, the appellants had not made any

application seeking compensation under the Workmens Compensation Act, 1923. They had merely made an application to collect the amount of compensation, which was deposited by the employer. Therefore, disbursement of the said amount could not be treated as claim instituted with the meaning of Section 3 (5) of the Act of 1923. Thus, claim petition filed by claimants-appellants under Section 163-A of the Motor Vehicle Act was maintainable. In these circumstances, the impugned Award is set aside.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments of *Asha Verman and others vs. Maharaj Singh and others*, 2015(2) RCR (Civil) 520, *New India Assurance Company Limited vs Gopali and others*, 2012 (12) SCC 198, *Sarla Verma and others vs. Delhi Transport Corporation and another*, 2009 (3) RCR (Civil) Page 77, *Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54 and *Munna Lal Jain and another vs. Vipin Kumar Sharma and others*, 2015 (3) Recent Apex Judgments 459, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income (as per minimum wages prevalent at the time of accident)	Rs. 2500/- per month.
(ii)	30% of (i) above to be added as future prospects	2500 + 750 = Rs.3250/-
(iii)	1/10 th of (ii) above is deducted as personal expenses of the deceased	3250 – 325 = Rs.2925/-
(iv)	Compensation after multiplier of 14 is applied	Rs.2925 x 12 x 14 = Rs.4,91,400/-
(v)	Loss of consortium to the widow (appellant no.1.)	Rs.1,00,000/-
(vi)	Loss of love and affection to the children (appellant Nos.2 and 3)	Rs.2,00,000/- (Rs.1,00,000/- each)
(vii)	Funeral expenses	Rs.25,000/-
(viii)	TOTAL COMPENSATION AWARDED	Rs.8,16,400/-

The amount of compensation of **Rs.8,16,400/-** shall be payable by the respondents jointly and severally, within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others***”, 2015(1) SCC 539.

Accordingly, the award stands modified to the above extent and the present appeal is allowed.

(RITU BAHRI)
JUDGE

31.08.2017
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No