

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

FAO No. 4508 of 2012

Date of Decision: January 10, 2017

The New India Assurance Co. Ltd.

....Appellant.

Versus

Rekha Devi and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. L.M. Suri, Sr.Advocate with
Mr. Neeraj Khanna, Advocate,
for the appellant.

Mr. Gopal Sharma, Advocate,
for respondents No.1 to 4.

JASPAL SINGH, J.

Instant appeal has been preferred by appellant-Insurance Company, feeling dissatisfied against the award dated March 23, 2012 passed by Motor Accident Claims Tribunal, Rewari (for short “Tribunal”) whereby claim petition filed by the claimants under Section 166 of the Motor Vehicles Act, 1988 (for short “the Act”) seeking compensation on account of death of Krishan Singh in a motor vehicular accident, was allowed.

2. Shortly put, facts contained in the present appeal are that on March 17, 2010 at about 7:00 p.m., Krishan Singh along with Hukam Singh was going to their home from Matanhale on motor cycle No. HR-36K-9349.

When they reached ahead of village Mundsha, a dumper tractor came from

Kosli side and hit the motorcycle of Krishan Singh. As a result of which Krishan Singh succumbed to his injuries on the spot. The claim petition was disposed of by the Tribunal and compensation to the tune of ₹19,71,668/- along with interest @ 6% per annum was awarded.

3. While assailing the impugned award dated 23.03.2012, learned counsel for the appellant-insurance company has urged that the compensation so awarded by the ld. Tribunal is highly excessive. Mis-appreciation of the evidence regarding income of deceased has resulted into miscarriage of justice. Ld. Tribunal has also erred in coming to the conclusion that appellant-insurance company is liable to pay the amount of compensation in spite of the fact that it is proved on record that no accident has taken place with aforesaid vehicle. The eye witnesses of the accident are procured one. Ld. Tribunal has not taken into consideration that the FIR was lodged against the unknown vehicle. Even, no registration No. of the offending vehicle was mentioned in the FIR, got registered by Hukum Singh. Moreover, Hukam Singh appeared in the witness-box as PW-3 and while subjected to cross-examination, he has stated that he had seen the registration number of offending vehicle at the first instance and had disclosed the same to the police in Hospital on the same day whereas FIR does not contain the registration number of the offending vehicle. Vehicle allegedly involved in the accident was also impounded by the police on 10.12.2010 i.e. after about 9 months from the date of accident, which itself creates a doubt about the involvement of vehicle. As per the statement of eye-witness-Hukam Singh, he has disclosed the registration number of offending vehicle to the police but even then, no such number was

mentioned in the FIR. Thus, all these facts clearly establish that vehicle in question was not involved in the accident. It has been just brought to picture to extort compensation from the appellant-insurance company.

4. Learned counsel for the appellant further contended that appellant-insurance company has wrongly fastened with liability to make the payment of compensation especially in the circumstances that driver of the offending vehicle was not holding a valid and effective driving license at the time of accident. Though, he is a holder of driving license of Light Motor Vehicle but he was driving a Dumper tractor, which was a Heavy Commercial Vehicle. Thus, it can be said that the driver was not a competent and authorized person to drive Dumper Tractor.

5. It was next argued by learned counsel for the appellant that while passing the impugned award, Id. Tribunal has not taken into consideration the fact that widow of deceased has already received a sum of ₹15 lakh from the Army on account of death of her husband Krishan Singh. This amount has not been deducted by the Id. Tribunal while calculating the compensation and fastened the liability upon the insurance company to pay the entire amount of compensation so awarded.

6. Not only this, Id. Tribunal has also committed a grave error in awarding compensation to the tune of ₹19,71,668/- by taking into consideration the salary of the deceased to the tune of ₹14,351/- whereas, as per the version of PW-2 Suresh Deswal, basic pay of the deceased was only to the tune of ₹6630/-. Thus, assessment of compensation by taking the income of the deceased to the tune of ₹14,351/- is wrong and compensation

awarded can be said to be on higher side, which deserves to be decreased/modified.

7. While concluding arguments, it has been submitted by learned counsel for the appellant that since it has not been proved that Krishan Singh son of Babu Singh died on 17.03.2010 in a motor vehicular accident due to rash and negligent driving of Tractor No. HR-36A-6182 by its driver-Satyawan (respondent No.5), thus, amount of compensation deserves to be suitably reduced.

8. On the other hand, learned counsel for the respondents has supported the impugned award and has submitted that the same is absolutely in accordance with the evidence available on file as well as settled proposition of law. It stands duly proved on record that Krishan Singh lost his life in a vehicular accident occurred on 17.03.2010 due to rash and negligent driving of offending vehicle bearing HR-36A-6182 by its driver-respondent No.5-Satyawan. Instant appeal being devoid of merits is liable to be dismissed, that too, with special costs.

9. Learned counsel for the respondents further urged that just and adequate compensation has been awarded by the Id. Tribunal while taking into consideration all the aspect of the case. An amount of ₹15 Lacs received by respondent No.1 on account of death of her husband-Krishan Singh, who was employed in the Army is not deductible and cannot be taken into consideration while awarding the compensation under the provisions of the Act. Similarly, the salary of deceased-Krishan Singh has also been rightly taken into consideration by the Id. Tribunal because it is the total salary being drawn by the deceased at the time of accident, which is

to be taken into consideration while assessing the compensation and not the basic salary.

10. The contention put forth by learned counsel for the appellant in this regard are absolutely against the settled proposition of law and as such carried no legal weight. The offending vehicle No.HR-36A-6182 was duly insured with the insurance company and, thus, this Court is of the considered view that the liability to pay the compensation has rightly been fastened upon the respondents i.e. driver, owner and the appellant-insurance company.

11. In the light of what has been discussed above, this Court does not find any merit in the instant appeal. As such, the same stands dismissed.

12. No order as to costs.

January 10, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No