

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

**FAO No.841 of 2015 (O&M).
Date of Decision: 11.01.2017.**

Oriental Insurance Co. Ltd.

....Appellant.

VERSUS

Smt. Nagina and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Abhimanyu Singh, Advocate for respondents No.1 to 5.

Respondents No.6 to 8 were proceeded against exparte vide order dated 03.08.2015.

SNEH PRASHAR, J.

This appeal was preferred by the appellant-Insurance Company assailing the award dated 19.08.2014 passed by Motor Accident Claims Tribunal, Gurgaon (for short, “the tribunal”) in MACT case No.5 of 20.01.2012 titled “Smt. Nagina and others vs. Ayub Khan and others” awarding compensation to the tune of Rs.13,72,500/- alongwith interest at the rate of 6% per annum from the date of petition till payment to respondents No.1 to 5-claimants and fastening liability of payment of the award amount on the appellant-insurer of the tractor No.HR-03D-3213 (hereinafter referred to as “the offending tractor”).

A petition under Section 166 of the Motor Vehicles Act, 1988

claiming compensation on account of death of Rafiq alias Bhura, aged 30

years, in a motor vehicular accident, was filed by his legal heirs-respondents No.1 to 5. It was alleged that on 10.12.2011, Rafiq alias Bhura alongwith one Tinku, who was the pillion rider, was going on his motorcycle from village Ghamroj to Koklaben. When they reached near Sohna Dhani, the offending tractor was standing in the middle of the road without any indication. The motorcycle of Rafiq struck into the offending tractor as a result of which he and Tinku fell down and suffered serious injuries. Rafiq succumbed to the injuries at the spot. The accident was witnessed by Kishore Dagar and Sanjay, who were following the motorcycle of Rafiq.

In their written statement, the driver and owners (respondents No.6 to 8) of the offending tractor submitted that there was no fault on their part as the offending tractor was not being driven and was only standing on the roadside. The insurer-appellant in its written statement besides taking preliminary objections that the driver of the offending tractor was not holding a valid and effective driving licence at the time of accident and that the vehicle was being plied without a valid route permit and fitness certificate, pleaded that the amount claimed was highly exaggerated.

On the basis of the pleadings of the parties, following issues were framed:-

- (1) Whether Rafiq sustained injuries and died in road side accident on 10.12.2011 by way of rash and negligent driving of tractor No.HR-30D-3213 being driven by respondent No.1? OPP.
- (2) If issue No.1 is proved in favour of petitioners then what amount of compensation the petitioners are entitled to and from whom? OPP.
- (3) Whether the petition is bad for non joinder and mis joinder of necessary parties? OPR.
- (4) Whether respondent No.1 was not holding a valid and

effective driving licence and route permit on the date of alleged accident? OPR.

(5) Whether the petition has been filed by petitioners in collusion with respondent No.1? OPR3.

(6) Whether respondents No.1,2 and 3 did not comply with the terms and conditions of insurance policy, if so to what effect? OPR.

(7) Relief.

Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal accepted the petition and awarded compensation as indicated above.

Feeling aggrieved, the appellant-insurance company preferred the instant appeal.

The submissions made by Mr. Ashwani Talwar, learned counsel representing the appellant and Mr. Abhimanyu Singh, learned counsel representing respondents No.1 to 5 have been heard and record perused.

The foremost and emphatically raised argument by learned counsel for the appellant-insurance company is that as per the contents of the First Information Report Ex.P2 lodged by Kishore Dagar (PW4), who had witnessed the accident, it appears that deceased Rafiq alias Bhura, who was driving the motorcycle on which Tinku was the pillion rider, had struck into the offending tractor which was parked on the road. The mode and manner of accident explained by the First Information Report lodger proved that the accident was result of contributory negligence on part of deceased Rafiq alias Bhura and driver of the offending tractor. Had the deceased been

would not have rammed into the same. Since the negligence on part of the driver of both the vehicles involved in the accident was equal, the claimants should have been held entitled to only 50% of the awarded compensation by the tribunal.

Learned counsel also contended that though the monthly income of the deceased assessed by learned tribunal and the multiplier applied calls for no interference, learned tribunal erred in adding 50% of the income towards future prospects even when the deceased was not in any permanent employment. In the case where the deceased was self employed or was on fixed salary (without provision of annual increment etc.), only the actual income at the time of death should be taken as basis for calculating compensation. To support his argument, learned counsel relied upon the law laid down by Hon'ble Supreme Court in **Reshma Kumari and others vs. Madan Mohan and another 2013(2) RCR(Civil) 660.**

Learned counsel further relied upon the pronouncement of Hon'ble Supreme Court in **National Insurance Co. Ltd. vs. Pushpa and others in SLP (Civil) 8058 of 2014** decided on 02.07.2014 wherein it has been inter alia held as follows:-

*“Since Reshma (supra) was rendered at earlier point of time, as is clear, the same has not been noticed in **Rajesh & others versus Rajbir Singh & others decided on 12.04.2013, reported as 2013 ACJ 1403** and that is why divergent opinions have been expressed. We are of the considered opinion that as regards the manner of addition of income for future prospects there should be an authoritative pronouncement. Therefore, we think it appropriate to refer the matter to a larger Bench.”*

There appears no force in the arguments of learned counsel for the appellant-insurance company. It was mentioned in the First Information Report Ex.P2 by PW4 Kishore Dagar and he also testified on oath when he stepped into the witness box that the offending tractor to which a trolley was attached, was parked on Gurgaon-Sohna Road without putting on the indicators and without taking any precaution to show its existence on the road. Admittedly, the accident occurred at 9:30 p.m. during the night on 10.12.2011. It was winter season and needless to say that at that hour the visibility due to darkness must be very poor for the motorists on the road. When unexpectedly some vehicle, which could not be seen from reasonable distance and is in stationary condition, comes in front of a motorist, there is every likelihood that despite care and caution he may strike into the vehicle.

Respondent No.6-Ayub Khan, driver of the offending tractor did not opt to appear in the witness box to rebut the allegation of PW4 Kishore Dagar that the offending tractor was parked in the middle of the road without putting on the indicators or without taking required precaution to reflect the existence of the stationary tractor-trolley on the road. No reason worth in its name was explained by the driver for leaving the tractor-trolley stationary in the middle of the road. In the said circumstances, it can be said without hesitation that no fault in causing the accident could be assigned to the deceased who unfortunately rammed into the offending tractor as he could not notice the same. The accident occurred solely due to rash and negligent driving on part of the driver of the offending tractor.

The second argument of learned counsel for the appellant that addition to the extent of 50% to the actual income of the deceased

vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170, Hon'ble Supreme

Court has observed as under:-

“Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.”

In the above premise, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

11.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**