

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

**FAO No.2557 of 2017 (O&M)
Date of decision: 24.08.2017**

The Oriental Insurance Company Limited

....Appellant

Versus

Sukhdev and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ram Avtar, Advocate,
for the appellant.

RITU BAHRI J. (Oral)

CM No.8452-CII of 2017

For the reasons mentioned in the application, same is allowed and delay of 20 days in re-filing of the appeal is condoned.

FAO No.2557 of 2017

The Oriental Insurance Company Limited-appellant has come up in appeal against the award dated 15.11.2016 passed by the Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.19,76,040/- has been awarded in favour of claimants-respondent Nos. 1 to 7 on account of death of Vijay Kumar in a motor vehicular accident which took place on 14.05.2011. Respondent No. 1 is brother, respondent No.2 is widow, respondent Nos.3 and 4 children, respondent Nos.5 and 6 parents and respondent No.7 is sister of deceased Vijay Kumar.

A.M., Vijay Kumar (since deceased) was going to attend his duty with his employer M/s Northern Morots (P) Ltd. G.T. Road, Ludhiana. When he reached near G.T. Road, a vehicle bearing registration No. PIM-9564 being driven by Gaurav-respondent No.8 (respondent No.3 in claim petition) in a rash and negligent manner, came from the side of Jalandhar and hit Vijay Kumar from his back, as a result of which, he suffered multiple injuries and died at the spot. He was taken to the hospital, but the doctor declared him dead. With regard to the accident, FIR Ex.C-7 was registered. Consequently, the claimants (respondent Nos. 1 to 7 herein) filed a claim petition before the Tribunal.

Upon notice, respondent Nos.1 to 3 (respondent Nos.8 & 9 herein) filed join written statement by taking preliminary objections with regard to maintainability of petition, concealment of true and material facts and mis-joinder of necessary parties. It was submitted that the offending vehicle was fully insured with respondent-Insurance Company (appellant herein), therefore, the company was liable to indemnify the insured and to pay the amount of compensation. It was further stated that the claimants were not legal representatives or dependents of deceased-Vijay Kumar.

Respondent No.4-Insurance Company (appellant) filed a separate written statement taking preliminary objections regarding maintainability of petition. It was stated that driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident, so the answering respondent was not liable to indemnify them. An earlier claim petition filed before the Tribunal was dismissed on 03.02.2014. It was further stated that the vehicle was registered in the name of Sanjay Kumar, but as per claim petition, the owner of the vehicle was mentioned as M/s

Ludhiana Beverage Ltd., G.T. Road, Ludhiana.

Respondent No.5-Sanjay Kumar (respondent No.11 herein) filed a separate written statement, wherein it has been stated that the claimants have concealed the material facts from the Court. The claim petition was bad for mis-joinder of necessary parties. It was further stated that respondent No.1 had never been the driver of the offending vehicle. The claimants were not the legal representatives or dependents of deceased-Vijay Kumar. All other allegations levelled by the claimants were denied and prayer for dismissal of the claim petition was made.

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

1. Whether in the area of village Laddowal, G.T. Road, Ludhiana, Vijay Kumar died in an accident on account of rash and negligent driving by respondent No.3 while driving vehicle bearing registration No. PIM-9564? OPP
2. Whether claimants are entitled to compensation, if so, to what amount and from whom? OPP
3. Whether offending vehicle did not have a valid registration certificate, insurance policy, route permit and fitness certificate at the time of alleged accident, if so, its effect? OPR (4)
4. Whether respondent No.1 was not holding valid and effective driving license at the time of alleged accident? OPR (4)
5. Whether petition is bad for non-joinder and mis-joinder of necessary parties? OPR

6. Whether the present petition is not maintainable? OPR

7. Whether the claimants have suppressed the material facts from the Court? OPR

8. Relief.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question had been taken place due to rash and negligent driving of offending vehicle bearing registration No. PIM-9564 by its driver-respondent No.3 (respondent No.8 herein) and thus, returned the finding on issue no.1 in favour of the claimants-respondent Nos. 1 to 7. This finding is given on the basis of testimony of Pritam Singh (CW-2), who was eye witness of the accident. Apart from this, claimants had also tendered documents Ex.P1 to Ex.P25 and Mark A & Mark B.

The deceased was employed as technician with M/s Northern Motors (P) Ltd., Ludhian. His income was assessed at Rs.7600/- per month. The compensation was assessed as under:-

Sr. No.	Heads	Calculation
(i)	Salary/earning	Rs.7600/- per month + 50% future prospectus = Rs.11,400/- per month
(ii)	1/5 th deducted as personal expenses of the deceased	Rs.11,400/- minus Rs.2280/- = Rs.9120/- per month
(iii)	Compensation after multiplier of 16 is applied	Rs.17,51,040/-
(iv)	Loss of consortium	Rs.1,00,000/-
(v)	Funeral expenses	Rs.25,000/-
(vi)	Love & affection to children	Rs.50,000/- each
(vii)	Total	Rs.19,76,040/-

Ultimately, the claim petition was accepted and a sum of

Rs.19,76,040/- was awarded as compensation in favour of the claimants. Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal.

Learned counsel for the Insurance Company-appellant has argued that in the present case, after registration of the FIR, no challan has been produced and no criminal trial is pending against the driver. He has further stated that apprehension of the claimants was that it was a case of murder and in this background, a criminal complaint had been filed by them. He has further argued that the driver of the offending vehicle was not holding a valid and effective driving licence, therefore, the insurance company was not liable to pay the compensation.

I have heard learned counsel for the appellant 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. In the present case, after registration of the FIR, investigation was carried out and recovery memos were prepared, whereby the offending vehicle was recovered by the police. A perusal of the impugned Award shows that the claimants had proved on record photographs of the offending vehicle bearing registration No. PIM-9564 as Ex.P6 and Ex.P7. Photograph of deceased-Vijay Kumar was produced as Ex.P4. Since, the offending vehicle had been recovered from the spot and its mechanical test report was obtained, this much evidence was sufficient to return a finding that the accident had been caused on account of rash and negligent driving of the offending vehicle by its driver. Initiation of criminal proceedings with respect to murder, will not be a ground to interfere in the finding returned

by the Tribunal. Moreover, copy of driving licence was proved on record as Mark-A, which was valid to drive light motor vehicle. Copy of insurance policy was proved as Ex.R-1, according to which, the offending vehicle was insured with the insurance company-appellant and the policy was valid w.e.f. 25.06.2011 to 24.06.2012. The accident in question had taken place on 14.05.2011.

After going through the impugned Award, no illegality, much less perversity has been found therein warranting interference by this Court. The Tribunal has assessed the compensation after appreciating evidence in the right perspective.

Resultantly, the present appeal is dismissed being devoid of any merit.

(RITU BAHRI)
JUDGE

24.08.2017
ajp

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