

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

**FAO No.5103 of 2017 (O&M)
Date of decision: 31.07.2017**

National Insurance Company Limited

....Appellant

Versus

Gurpreet Kaur and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Harsh Aggarwal, Advocate,
for the appellant.

RITU BAHRI J. (Oral)

National Insurance Company Limited-appellant has come up in appeal against the award dated 03.04.2017 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.18,07,000/- has been awarded in favour of claimants-respondent Nos. 1 to 3 on account of death of Rattan Singh in a motor vehicular accident which took place on 31.01.2015. Respondent No. 1 is wife, respondent No.2 is daughter and respondent No.3 is mother of deceased Rattan Singh.

Brief facts of the case are that on 31.1.2015 at about 7.15 PM, deceased Rattan Singh was going on the road leading from Kheda Service Station on Malout Road Fazilka to Dabala Kalan while sitting on the pillion seat of the motorcycle driven by Sanjay Kumar at a slow speed on its left side of the road. They were being followed by Sukhwinder Singh. When they reached in the area of village Salamwala, Police Station Arniwala, the

motorcycle struck against the truck loaded with sand bearing registration No.HR 57 5515 parked in the middle of the road in a pitch dark by Ram Singh-respondent No.4 (respondent no.1 in the claim petition). There were no parking lights or signals put on the truck to warn the on going traffic. As a result of the accident, both the riders of the motorcycle fell on the road and received injuries. Rattan Singh died on the spot. They were taken to hospital. The accident had taken place due to rash negligent parking of truck bearing registration No. HR 57 5515 parked by driver-Ram Singh. A criminal case was registered against the driver of offending truck for causing the accident on the basis of statement of Sukhvinder Singh. Consequently, the claimants (respondent Nos. 1 to 3 herein) filed a claim petition before the Tribunal.

Upon notice, none had appeared on behalf of driver-respondent No.4 (respondent no. 1 in the claim petition), therefore, he was proceeded against ex parte vide order dated 3.1.2017. Respondents Nos.2 and 3 (in claim petition) contested the claim of the claimants by filing separate written statements. Owner of the offending truck-respondent No.5 (respondent No.2 in claim petition) contested the claim of the claimants by alleging that no accident had taken place as alleged by the claimants. It is stated that driver was having valid driving licence and answering respondent being owner of the vehicle having valid RC and licence, cover note, fitness certificate and tax receipt. A false FIR was registered by the police.

Insurance Company-appellant (respondent No.3 in claim petition) contested the claim of the claimants and pleaded that the petition is not maintainable. Owner had not given any intimation about the occurrence

and committed breach of terms and conditions of the policy. It is further pleaded that in case the alleged accident had taken place, it was the sole negligence on the part of the deceased as well as the rider of the motorcycle on which the deceased was sitting as a pillion rider. Moreover, both the deceased and the rider of the said motorcycle were not wearing helmet. The motorcycle was being driven in a rash and negligent manner at a high speed which struck against the stationary truck causing injuries to the deceased and ultimately resulting in his death. Rest of the averments have been denied and a prayer for dismissal of petition was made. 5.

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

1. Whether deceased Rattan Singh died in a motor vehicle accident due to rash and negligent driving of truck no. HR-57-5515 by respondent no. 1? OPP.
2. Whether the claimants are entitled to compensation on account of death of Rattan Singh? if yes, from whom and to which extent ? OPP.
3. Whether the driver of the offending vehicle was not holding a valid driving licence at the time of accident?OPR.
4. 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 parking of truck by its driver-respondent No.1 (respondent No.4 herein) and thus, returned the finding on issue No.1 in favour of the claimants-respondent Nos. 1 to 3. This finding is rightly based on the deposition of Sukhwinder Singh (PW-1), who was an eye witness of the accident. In the absence of any proof of earnings, income of the deceased was assessed at Rs.8000/- per month being a skilled worker. In

this income, 50% has been added on account of future prospects, which came to be Rs.12,000/- per month ($8000 + 4000 = 12,000/-$). Out of this, $1/3^{\text{rd}}$ has been deducted towards personal expenses of the deceased. Accordingly, total dependency came to Rs.8000/- per month i.e. Rs.96,000/- per annum. After applying the multiplier of 17, loss of dependency came to be Rs.16,32,000/-. Apart from this, Rs.1,00,000/- were awarded to claimant No.1 (wife) towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.50,000/- towards loss of love and affection. Ultimately, the claim petition was accepted and a sum of Rs.18,07,000/- was awarded as compensation in favour of the claimants. Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal.

The main ground to challenge the impugned Award is that the accident in question had taken place on 31.01.2015 on account of contributory negligence of the deceased, who was coming on the motorcycle and hit the standing truck from backside.

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

This aspect has been considered by the Tribunal while deciding issue No.1, whereby it has been observed that the motorcycle of the deceased had struck against the truck bearing registration No.HR-57-5515, which was parked in the middle of the road by its driver-Ram Singh and no parking lights or signals were put on the truck to warn the on going traffic. Hence, motorcycle of deceased struck against the said truck from backside, as a result of which, he suffered injuries and died on the spot. Apparently, there was negligence on the part of driver of the offending truck. Although

the truck was not standing in the middle of the road, yet its driver was duty bound to put on the parking lights or signals to warn the ongoing traffic.

In view of the above discussion, this Court is of the view that the Tribunal has rightly recorded finding on issue No.1 against the driver of offending truck. Because of his rash and negligent driving, the accident had occurred and Rattan Singh received injuries, which resulted into his death.

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.

(RITU BAHRI)
JUDGE

31.07.2017
ajp

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