

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

F.A.O. No. 649 of 2017 (O&M)

Date of Decision:- 21.02.2017

The Oriental Insurance Company Ltd.

...Appellant

vs.

Sukhwinder Kaur and others

...Respondents.

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.K. Bashamboo, Advocate,
for the appellant.

DAYA CHAUDHARY, J.

C.M. No. 3785-CII of 2017

Allowed as prayed for.

C.M. No. 3786-CII of 2017

This application has been filed for placing on record Annexure
P-1 attached with the application.

Application is allowed. Annexure P-1 is taken on record.

C.M. No. 1988-CII of 2017

This is an application for condonation of 25 days' delay in
filing the appeal.

For the reasons mentioned in the application, the same is
allowed. Delay of 25 days in filing the appeal is condoned.

C.M. No. 1987-CII of 2017

This is an application for condonation of 15 days' delay in

refiling the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 15 days in refiling the appeal is condoned.

C.M. No. 1990-CII of 2017

This is an application for stay of recovery of award passed by the Motor Accident Claims Tribunal, Patiala.

Since the main appeal itself is being decided, no separate order is required to be passed in this application.

Accordingly, the application is dismissed.

F.A.O. No. 649 of 2017

The appellant-Insurance Company has filed the present appeal challenging the award dated 5.8.2016 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'The Tribunal') whereby the claim petition has been allowed and claimant No. 1 has been held entitled to ₹ 11,15,000/- and claimants No. 2 to 5 have been held entitled to ₹ 2.5 lacs each.

Briefly, the facts of the case are that the claimants being legal representatives and dependents of deceased-Gurcharan Singh filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

The claimants averred in the claim petition that deceased Gurcharan Singh @ Laddi was 37 years of age at the time of accident. He was using harvesting machine being joint owner with one Gurvinder Singh. He was having a turning machine as well as dairy business and was earning ₹ 40,000/- per month. Deceased Gurcharan Singh along with Gurvinder

Singh was going from Patiala to Amritsar on their combine bearing registration No. PB-04G-7616, which was being driven by Gurmel Singh. Deceased was sitting on conductor side and the driver was driving the combine on the correct side of the road. When they reached village Sahnewal Khurd, District Ludhiana, a truck bearing No. PB-11AL-4935 which was being driven by respondent No.1 at a very high speed and in a rash and negligent manner, came from behind and struck into combine machine from the rear side, as a result thereof, Gurcharan Singh fell on the road and run over by the wheels of the combine. He suffered multiple grievous injuries and his both legs were fractured. The driver of the offending truck ran away from the spot. The combine was also badly damaged. Gurmel Singh and Gurvinder Singh rushed Gurcharan Singh to Doraha hospital from where he was referred to Apollo Hospital, Ludhiana but he succumbed to his injuries. An amount of ₹ 1,50,000/- was stated to be spent on transportation, funeral and last rites of the deceased. The matter was reported to police and FIR No. 85 dated 27.4.2015 under Sections 279, 427 and 304-A IPC at Police Station, Sahnewal was registered against driver of the offending vehicle i.e. respondent No.6.

Said claim petition was contested by the owner, driver as well as insurance company who filed their respective written statements. The claim petition was allowed by the Tribunal and claimants were granted total compensation to the tune of ₹ 21,15,000/- which was ordered to be paid by all the respondents jointly and severally. The award dated 5.8.2016 is subject matter of challenge in the present appeal filed by the appellant-insurance company.

Learned counsel for the appellant submits that while awarding compensation, the learned Tribunal has not taken into consideration the fact that the combine was overloaded and deceased was sitting un-authorizedly against the sitting capacity and as such it was a case of contributory negligence. Learned counsel also submits that claimants could not prove the income of the deceased but despite that it was assessed as ₹ 15,000/- per month, which is on the higher side. At the end, learned counsel for the appellant submits that the award passed by the Tribunal is liable to be modified and the compensation awarded to the claimants be reduced being on the higher side.

Heard arguments of learned counsel for the appellant and have also perused the impugned award and other documents available on the file. Following issues were framed by the Tribunal while deciding the claim petition:-

- “1. Whether Gurcharan Singh alias Laddi son of Amar Singh has died in a roadside accident which took place on 26.4.2015 at about 10.00 pm due to rash and negligent driving of respondent no. 1 ? OPP
2. If issue no. 1 is proved, whether the claimants are entitled to compensation from whom and to what amount ? OPP
3. Whether the claimants have not come to the Court with clean hands. ? OPR 1&2.
4. Whether the claimants have got no cause of action to file the present claim petition ? OPR 1&2.

5. Whether the present claim petition is not maintainable in the present form ? OPR3
6. Whether the respondent no. 1 was not holding a valid and effective driving licence at the time of alleged accident ? OPR 3
7. Whether the claimants have filed the present claim petition in collusion with respondent no. 1 ? OPR3
8. Whether the respondent no.1 was not holding the registration certificate, route permit and fitness certificate of the offending vehicle at the time of alleged certificate ? OPR 3
9. Relief.”

The finding recorded by the Tribunal on issue No. 1 is reproduced as under:-

“ISSUE NO. 1.

Onus to prove issue no. 1 is on the claimants that the deceased Gurcharan Singh has died in a roadside accident due to the rash and negligent driving of Surjeet Singh who was driving truck bearing registration no. PB-11AL-4935 at the time of accident. The claimants have examined Gurmail Singh CW2 to prove the rash and negligent driving of Surjeet Singh. Gurmail Singh has stated in his affidavit Ex.CW2/A that he is an eye witness to the accident and author of the FIR. He further stated that accident took place due to rash and negligent driving

of Surjeet Singh. He has narrated the entire sequence of events which led to the accident due to rash and negligent driving of Surjeet Singh in his affidavit Ex. CW2/A. The claimants have also placed on the file copy of FIR Ex. C1 which shows that FIR no. 85 dated 27.4.2015 was registered at Police Station, Sahnewal, District Ludhiana under sections 279, 427 and 304-A of IPC against respondent no. 1 on the statement of Gurmail Singh son of Sukhdev singh. Respondent no. 1 Surjeet Singh has not appeared in the witness box to rebut the fact that the accident has not taken place due to his rash and negligent driving. Therefore, after considering the statement of Gurmail Singh CW2, copies of FIR and postmortem report of deceased Gurcharan Singh (Ex.C2), it is proved on file that accident took place due to rash and negligent driving of Surjeet Singh son of Natha Singh. Police has also presented the report under section 173(2) of Cr.P.C. against Surjeet Singh. This fact is proved on the file by the copy of the report under section 173(2) of Cr. P.C. Ex. C3. The charge was framed against Surjeet Singh on 21.8.2015 to which he pleaded not guilty and claimed trial. Therefore, this tribunal is of the considered opinion that the accident took place due to rash and negligent driving of respondent no. 1. Therefore, issue no. 1 is decided in favour of claimants

and against the respondents.”

It has been proved on record from the findings recorded by the Tribunal that Gurcharan Singh died due to rash and negligent driving of driver of the offending vehicle. It has also been proved on record that he was competent to drive the said truck on the date of accident as he was having a valid driving licence. The insurance company had got examined Puran Singh, Junior Assistant posted in the office of DTO Patiala. It was also proved on record that the offending vehicle was having valid registration certificate Exhibit R-2, road permit Exhibit R-3, fitness certificate Exhibit R-4 and insurance policy Exhibit R-5.

As per averments made in the claim petition, the deceased was working on the combine and he was having six buffaloes also as he was doing the work of dairy farming. Although it was stated in the claim petition that his monthly income was ₹ 40,000/- per month but he was not paying any income tax. The age of the deceased was proved to be 44 years of age at the time of accident on the basis of certificate of birth. It has also been proved on record that Gurcharan Singh was joint owner of the combine with Gurvinder Singh and both of them were going to Amritsar on the ill-fated day. On the basis of one bill book Exhibit C-11 produced by the claimants, it was proved that Gurcharan Singh was also running a welding workshop and was having income from there. Some of the bills were found lying blank in the bill book. In spite of that, the learned Tribunal assessed monthly income of deceased only as ₹ 15000/- per month. By considering that the deceased was having three minor dependent children, wife and old

father of 82 years, 1/4th amount of the total income was deducted for personal expenses of the deceased in view of ratio of judgment passed by Hon'ble the Apex Court in the case of **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 ACJ 1298. The deceased was 44 years of age (The age of the deceased was mentioned wrongly. His date of birth is 10.3.1979 and he was aged about 37 years but the claimants have not filed any appeal for enhancement of compensation) and by applying multiplier of 14, the claimants were held entitled to ₹ 18,90,000/-. ₹ 1 lac was awarded for loss of consortium and ₹ 25000/- towards funeral expenses. The minor children were held entitled for ₹ 1 lac for loss of love and affection and as such, the claimants were held entitled to ₹ 21,15,000/- along with interest @ 7 -1/2% from the date of filing of claim petition till its realization.

The award passed by the Tribunal has been challenged only on the ground that it is on the excessive side, whereas, as per ratio of judgment passed in the case of **Punam Devi and another vs. Divisional Manager, New India Assurance Co. Ltd.**, 2004 (3) SCC 386 while relying upon another judgment of Hon'ble the Apex Court in the case of **National Insurance Co. Ltd., Chandigarh vs. Nicolleta Rohtagi and others**, 2002 (7) SCC 456, it was held that the insurance company cannot challenge quantum of compensation awarded by the Tribunal. The only ground open to insurer is contained in Section 149(2) of the Act. In **National Insurance Company Ltd. vs. Swaran Singh and others**, 2004 (2) RCR (Civil) 114 (SC), it has been held that mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in

themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. In the present case, the insurer has not led any evidence that the driver of the vehicle had no licence. The burden of proof that the driver had no licence was open to the insurer which it failed to discharge.

In view of facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the appellant and the appeal being devoid of any merit is hereby dismissed.

February 21, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned **Yes**

Whether Reportable **Yes**