

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

F.A.O. No. 838 of 2017 (O&M)

Date of Decision:- 03.03.2017

The New India Assurance Co. Ltd.

....Appellant

vs.

Manjeet Kaur and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sukhdarshan Singh, Advocate,
for the appellant.

DAYA CHAUDHARY, J.

The present appeal has been filed challenging award dated 15.10.2016 passed by the Motor Accident Claims Tribunal, Jalandhar (hereinafter called 'the Tribunal').

Briefly, the facts of the case, as made out in the present appeal, are that a claim petition was filed by claimants-respondents No. 1 to 3 stating therein that on 25.3.2010, deceased Joginder Pal alongwith his wife (respondent No. 1 and father of respondents No. 2 and 3) was travelling in a car bearing registration No. PB-09-A-0035 being driven by his son Surinder Pal @ Vicky. His wife Smt. Manjeet Kaur along with Smt. Nirmala Devi were sitting in the said car which was hit by truck bearing registration No. HR-37-A-6134 being driven in a rash and negligent manner, due to which, Smt. Nirmala Devi and Surinder Pal @

Vicky died at the spot whereas Joginder Pal and Manjeet Kaur suffered serious injuries and were taken to hospital where Joginder Pal also succumbed to injuries suffered by him. FIR No. 75 dated 25.3.2010 was registered under Sections 304-A, 279, 337, 338 and 427 IPC at Police Station Nakodar against driver of the offending vehicle.

The claim petition was contested by the owner, driver and the insurance company. The Tribunal allowed the claim petition vide award dated 15.10.2016 which is the subject-matter of challenge in the present appeal by the insurance company.

Learned counsel for the appellant-insurance company submits that amount of compensation awarded by the Tribunal is on the higher side. No medical record was produced by the claimants and no post mortem was conducted to ascertain the cause of death of Joginder Pal. PW-5 Dr. Kamaljit Singh had specifically stated that the injury inflicted upon the deceased cannot lead to shock and death of Joginder Singh. It may be due to any other reason but not because of shock due to injury. Learned counsel also submits that respondents No. 2 and 3 are not entitled for any compensation as both are married daughters of the deceased. At the end, learned counsel for the appellant submits that the award passed by the Tribunal is liable to be set aside/modified.

Heard arguments of learned counsel for the appellant and have also perused the impugned award and other documents available on the file.

The facts relating to filing of claim petition under Section 166 of the Motor Vehicles Act and passing of award in favour of the claimants are not disputed.

As per case of the claimants, deceased Joginder Pal along with his wife Smt. Nirmala Devi were traveling in the car which was hit by the offending truck. Surender Pal and Nirmala Devi died at the spot and Smt. Manjeet Kaur suffered serious injuries. The following issues were framed by the Tribunal:-

- “1. Whether Joginder Paul died in a motor vehicle accident which took place on 25.3.2010, in the area of village Gohir, Nakodar, Distt. Jalandhar, on account of rash and negligent driving of Sohan Singh, respondent No.1, being driver of Truck bearing registration No. HR-37-A-6134? OPP
2. Whether the claimants being legal representative of Joginder Paul, are entitled to compensation, if so, how much and from whom? OPP
3. Whether the respondent No.1-Sohan Singh, being driver of Truck bearing registration No. HR-37-A-6134 was not holding a valid and effective driving licence at the time of accident? OPR No. 3.
4. Whether Truck bearing registration No. HR-37-A-6134 was being plied without valid route permit and fitness certificate at the time of accident, if so, its effect? OPR No. 3
5. Whether the claim petition is bad for non-joinder of necessary parties? OPR No.3.
6. Relief.”

On appraisal of evidence available on record and by considering the submissions made by the claimants and owner/driver/insurance company, the award was passed by the Tribunal vide order dated 15.10.2016 which has been challenged on the ground that there was no proof/evidence that death of Joginder Pal was on account of accident and no post mortem was conducted. PW 1-Smt. Manjeet Kaur has stated in his affidavit that Joginder Pal had died due to injuries suffered by him in the accident. It has also come on record that it was a case of negligence on the part of the doctor who has misplaced the medical record of the deceased. PW-4-Sarabjit Sahota, Laboratory Technician produced copy of register Ex. PW/A wherein vide entry at Sr. No. 554, Joginder Pal was shown to have been admitted because of injuries on his person and subsequent action of stitching of the wounds was also mentioned therein. PW-4 has also testified that Dr. Kanwaljit Singh had issued certificate Ex. PW/4/B which is as under:-

“As the repair of the hospital was being carried out, the concerned files of Manjit Kaur wife of Joginder Pal and of Joginder Pal might have misplaced. We could not trace the file. We are extremely sorry for that. Moreover, the person who used to keep the record has left the hospital and gone to U.P. Manjit Kaur was discharged on request. Joginder Pal got suddenly sick; got convulsive. He was given treatment. As he was serious, was referred to higher centre in Jalandhar. As he was serious, he could have got cardiac arrest on the

way. For these types of patients, we usually charge ₹ 12,000/- (twelve thousand) including medicine and hospital stay.”

On perusal of said evidence, it was held by the Tribunal that deceased Joginder Pal had died in a motor vehicular accident due to rash and negligent driving of driver of the offending vehicle.

As far as the income of the deceased is concerned, it is mentioned in the award that the deceased has retired as Service Station In-charge from the Punjab Roadways Depot, Moga and he was also running the shop of Auto Electrician along with his son Surinder Pal under the name and style of M/s Jagdambay Auto Electricals situated at Jalandhar Road, Nakodar. He was shown to be earning ₹ 30,000/- per month. Even the income tax returns for the year 2009-2010 in the name of M/s Jagdambay Auto Electricals as Ex. PW3/B have been produced showing the total income from the business concern as ₹ 2,19,480/- per annum. The Tribunal assessed income of deceased Joginder Pal to the extent of 50% i.e. ₹ 1,09,740/- per annum by deducting 1/3rd of the income on his own personal expenses. The dependency of the claimants was assessed to ₹ 73,160/-. As per the ratio of judgment rendered by Hon'ble the Apex Court in the case of **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) 77, the multiplier of 5 was applied. Claimant-Smt. Manjeet Kaur was also held entitled to ₹ 1 lac as loss of consortium and an amount of ₹ 25,000/- was awarded as funeral expenses. Claimants were also held entitled for interest @ 7.5% per annum from the date of filing of claim petition

till its realization. Although the interest granted as 7.5% is on the lower side but no appeal has been filed by the claimants for its enhancement.

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 mentioned 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.

March 03, 2017 poonam	(DAYA CHAUDHARY) JUDGE
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Whether speaking/reasoned	Yes
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Whether Reportable	Yes
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