

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**XOBJC-16-CII of 2016 in/and
FAO No. 1045 of 2013 (O&M)
Date of Decision : 12.03.2018**

National Insurance Co. Ltd.

.....Appellant

Versus

Rattan Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Paul S. Saini, Advocate with
Mr. Vipul Sharma, Advocate
for the appellant.

Mr. O.P. Hoshiarpuri, Advocate
for respondents no. 1 to 6/cross-objectors.

Mr. Lakhwinder S. Mann, Advocate
for respondents no. 9 to 11.

Surinder Gupta, J.

Appellant-Insurance Company has filed this appeal against award dated 01.12.2012 passed by Motor Accident Claims Tribunal, Jalandhar (later referred to as 'the Tribunal') awarding compensation of ₹4,30,000/- to claimants for death of Amarjit Singh (later referred to as 'the deceased'), aged 21 years, in a motor vehicle accident with Santro car bearing registration no. PB-33-B-2197 (later referred to as 'the offending vehicle').

2. In the claim petition, claimants have described the manner of accident in para 24 as follows:-

"That on 13.11.2006, at about 1.00 a.m., the deceased was traveling in the tractor trolley bearing registration no. PB-08-K-5864 driven by Nirmal Singh @ Nima S/o Mehnga Singh R/o Village Bhardwazian, P.S. Nurmehal, Tehsil Phillaur, Distt. Jalandhar. The deceased Amarjit Singh S/o Rattan Singh was sitting in the trolley. The driver of the tractor trolley was

coming from the Satsang of Baba Ranjit Singh on 13.11.2006 at 1.00 a.m. and he was coming back to the Village Bhardwazian via Nakodar. The Sangat (persons who attended the Satsang) i.e. including men and women, children including Amarjit Singh S/o Rattan Singh deceased were sitting backside of the trolley, when the tractor trolley reached 'Y' point Nurmehal Nakodar Road, near DIPS School, G.T. Road, the driver of the tractor trolley was driving the tractor trolley towards its left side. The respondent no. 1 who was driving the Santro car bearing registration no. PB33-B-2197 Forest Dew Colour came from Nurmehal side. The driver of the Santro car was driving rashly and negligently and struck against the tractor trolley. The driver of the Santro car (respondent no. 1) struck the car against the tractor, then struck against the trolley (sic. as a), result of which the trolley turned down (turned turtle) (Ult Gai) towards the left side of the field and the persons who were sitting in the trolley fell down on the field and Amarjit Singh fell on Kacha portion of the road, the respondent no. 1, who was driving the car rashly on high speed could not control the car even after hitting the tractor and trolley and crushed the back of Amarjit Singh (sic. as a) result of which Amarjit Singh S/o Rattan Singh received multiple injuries on his back, head and other parts of his body and thereafter the car went towards the fields and stopped on the lower level of the field. The tyres of the car crushed the back of Amarjit Singh. The car was also damaged. The entire accident was witnesses by Sarwan Singh S/o Gurmeet Singh R/o Village Bhardwazian, Nirmal Singh S/o Mehnga Singh, who also lodged the FIR, Balhar Singh S/o Naranjan Singh and by other persons, who were coming in tractor trolley to their respective village. The deceased was taken to Civil Hospital, Nurmehal for medical treatment, from where he was referred to Jalandhar, on the way after crossing Jandiala, Amarjit Singh died on his way to Jalandhar.....”

3. While Insurance Company has challenged the award, claimants

have also filed cross-objections (XOBJC-16-CII-2016) seeking enhancement

of compensation as awarded by the Tribunal.

4. The Tribunal while recording finding on issue no. 1 has observed that accident was caused due to rash and negligent driving of the offending vehicle by its driver. Amount of compensation awarded to claimants was computed as follows:-

(i)	Name of the deceased	Amarjit Singh
(ii)	Age of the deceased	21 years
(iii)	Monthly income of the deceased as assessed by the Tribunal	₹5000
(iv)	½ of (iii) above deducted towards personal expenses	₹5000- ₹2500) = ₹2500 per month
(v)	Compensation calculated after applying the multiplier of 14 in view of age of mother of the deceased	(₹2500X12X14) = ₹420000
(vi)	Compensation towards funeral expenses	₹10000
Total		₹430000

5. Firstly, I take cross-objections (XOBJC-16-CII-2016) filed by claimants seeking enhancement of compensation. Learned counsel for claimants/cross-objectors has confined his submission only for grant of compensation as per observations of Hon'ble Apex Court in case of **National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**, which allow 40% addition in income of the deceased towards future prospects and application of multiplier while computing amount of compensation for loss of dependency as per age of the deceased and not as per age of claimant-mother.

6. Learned counsel for the appellant-Insurance Company has not disputed the law as settled by Hon'ble Apex Court in case of ***Pranay Sethi (supra)***, as such, amount of compensation, which can be allowed to claimants works out as follows:-

(i)	Monthly income of the deceased as assessed by the Tribunal	₹5000
(ii)	40% of (i) above added towards future prospects	(₹5000+ ₹2000)= ₹7000/- per month
(iii)	½ of (ii) above deducted towards personal expenses	(₹7000- ₹3500) = ₹3500 per month
(iv)	Compensation calculated after applying the multiplier of 18 in view of age of the deceased	(₹3500X12X18) = ₹756000
(v)	Compensation towards funeral expenses and loss of estate	₹20000
Total		₹776000

7. Now I come to appeal (FAO No. 1045 of 2013) filed by the Insurance Company.

8. Learned counsel for appellant has argued that respondent no. 9-Nirmal Singh was driver of the tractor, which allegedly met with an accident and Sarwan Singh, cited as eye-witness, were not examined. Driver of the offending vehicle (Santro Car), namely, respondent no. 7-Dharam Pal has been acquitted in criminal case. Claimants have examined father of the deceased, who was not an eye-witness of the occurrence. PW-2 Gurpreet Singh, brother of the deceased, was examined as eye-witness just to fill up the lacuna by taking permission to lead additional evidence. Testimony of Gurpreet Singh is not reliable as his name is not mentioned as eye-witness in the claim petition. He was introduced as eye-witness at a very late stage. He was not even cited as eye-witness in the challan submitted by the police and is an interested witness being brother of the deceased. He has further argued that even if version of claimants be believed that the accident was caused due to rash and negligent driving of the offending vehicle, still it was a case of contributory negligence as tractor-trolley, which met with accident, was carrying 50 persons in the trolley, which is in violation of traffic rules as the

tractor-trolley is not a passenger vehicle.

9. Learned counsel for respondents have argued that the accident is admitted in this case. Acquittal of driver of the offending vehicle in criminal case is no reason to discard case of claimants as he (driver of offending vehicle) had not dared to appear as witness to give his own version regarding the accident. Gurpreet Singh, brother of the deceased, has stated that he was traveling in the trolley at the time of accident and his statement is material and cannot be discarded by terming him as interested witness. This plea is not available to appellant, which is insurer of Santro car that driver of the tractor-trolley had violated the traffic rules by carrying passengers in his trolley, as such plea is available to insurer of the tractor.

10. In their written statements driver and owner of the offending vehicle have admitted the accident but have alleged that it took place due to negligence of deceased himself. It was denied that Dharam Pal, driver of the offending vehicle was driving it in a rash and negligent manner at the time of accident. Photographs of the site of accident placed on file show that accident of the tractor and the offending vehicle had taken place. While tractor-trolley had turned turtle, the offending vehicle was lying in a pit. Once the accident is proved/admitted, the next question before the Tribunal was to determine as to how the accident had taken place. While examining evidence on record, the Tribunal has observed that the offending vehicle first hit the tractor and then the trolley, as a result of which the trolley turned turtle towards left side. The deceased fell on the ground and the offending vehicle crushed his back as it was not within control of Dharam Pal, its driver. The issue of acquittal of Dharam Pal in criminal trial was also raised before the Tribunal and it was observed in para 12 of the award as follows:-

counsel for the respondent no. 3 simply for the reasons that Nirmal Singh, who had earlier lodged FIR against driver of the Santro Car has not supported the case of the prosecution, as such, fault on the part of driver of Santro car cannot be said to be proved and compensation cannot be awarded to the claimants, because Nirmal Singh even appearing before the Court of learned Judicial Magistrate, Ist Class, in criminal case has not resiled from his entire version. He has failed to identify the accused, for the reasons best known to him. Otherwise, he has not deviated from whatever he had stated in the FIR. Otherwise, also only because Rattan Singh and Gurpreet Singh happened to be father and brother of deceased, their testimony cannot be discarded by labeling them as interested witness. Nirmal Singh respondent no. 4 is maker of FIR with regard to this accident. Therein fact of accident has been set forth in detail in the same manner as it is now being stated by PW-1 and PW-2.”

11. Keeping in view the fact that driver of the offending vehicle was not examined; the accident is admitted; testimony of PW-2 Gurpreet Singh cannot be discarded on the mere ground that he is brother of the deceased; I find that Tribunal has committed no error while concluding that accident was caused due to rash and negligent act of driver of offending vehicle. The plea of contributory negligence as raised by learned counsel for the appellant also has no basis for the reasons that owner and driver of the tractor-trolley, even if, had used the tractor-trolley for carrying passengers, have not caused the accident due to its rash and negligent driving by Nirmal Singh. The accident was caused by the offending vehicle, as such, appellant being insurer of the offending vehicle has been rightly held to be responsible to indemnify the insured.

of 2013) filed by the appellant-Insurance Company has no merit and the same is dismissed while cross-objections (XOBJC-16-CII-2016) filed by claimants-respondents no. 1 to 6 have merit and are accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Amarjit Singh is enhanced from ₹4,30,000/- to ₹7,76,000/-. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of cross-objections till actual realization. Appellant-Insurance Company being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. Claimants no. 1 and 2 being parents of deceased will share the enhanced amount of compensation as follows:-

1. Claimants no. 1 (father) : 30%
2. Claimant no. 2 (mother) : 70%

13. In the event of demise of any of the claimants before or after disposal of this appeal, compensation of his/her share shall be paid to surviving claimant.

March 12, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No