

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2085 of 2014 (O&M)
Date of Decision : 20.03.2018

Oriental Insurance Company Ltd.

....Appellant

Versus

Jaswinder Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant.

Mr. Pankaj Katia, Advocate
for respondents no. 1 and 2.

Surinder Gupta, J.

This is appeal filed by Oriental Insurance Company Ltd against award dated 30.11.2013 passed by Motor Accident Claims Tribunal, SAS Nagar (Mohali) (later referred to as 'the Tribunal') awarding compensation of 10,16,000/- for death of Sukhwinder Singh (later referred to as 'the deceased'), in a motor vehicle accident on 05.08.2011 with Pick Up Four Wheeler bearing registration no. PB-65-G-5486 (later referred to as 'the offending vehicle').

2. Learned counsel for the appellant has argued that it was a case of head on collusion and relying on observations of a coordinate Bench of this Court in case of **The New India Assurance Co. Ltd. vs. Smt. Harbans Kaur wife of Sh. S. Bhagwant Singh and others, 2010 (4) PLR 422**, he has argued that where a moving vehicle is hit against a parked vehicle, it is a case of contributory negligence. The accident took place at 07.30 pm on 05.08.2011, when it was not so dark and the deceased, who was on his motorcycle, could certainly avoid the accident by taking due care and caution even if the offending vehicle had been wrongly parked. He has

further argued that the deceased was a student doing Diploma in Computer Engineering. The Tribunal has taken his income as ₹12,000/- per month, which is on higher side. The compensation of ₹75,000/- as awarded by the Tribunal towards loss of love and affection and funeral expenses is to be restricted to ₹30,000/- under the head of loss of estate and funeral expenses as per law settled by Hon'ble Apex Court in case of **National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.**

3. Learned counsel for respondents no. 1 and 2 has argued that the deceased was a student doing Diploma in Computer Engineering and had a bright future. Keeping in view this fact, the Tribunal has taken his income as ₹12,000/- per month. Relying on observations in case of **FAO No. 1554 of 2014 (Parveen Kumar and another vs. Balbir Singh and others) decided on 28.02.2018**, he has argued that in similar circumstances, this Court has assessed income of the deceased, who was a student of Mechanical Engineering in a college at Fatehgarh Sahib and died in an accident, as ₹15,000/- per month.

4. While assessing income of deceased in a motor vehicle accident Tribunal has to apply some guess work. It is quite possible that a boy doing computer or mechanical engineering may get better chances to rise in life and get a good package after completing his studies. However, this could not be a presumption in every case. While drawing a balance, income of the deceased as taken by the Tribunal cannot be termed to be on higher side. As per law settled by Hon'ble Apex Court in case of ***Pranay Sethi***, claimants are also entitled to claim future prospects and multiplier as per age of the deceased while in this case no addition in income of the deceased has been allowed and the multiplier has also been applied as per age of parents.

However, this will be a fact to be seen if any appeal seeking enhancement of compensation is filed by claimants, as such, I find no reason to alter the quantum of compensation awarded by the Tribunal.

5. On the point of negligence in causing the accident, the Tribunal while deciding issue no. 1 has relied on statement of Navkaran Singh, eye-witness of the occurrence, who has stated that he alongwith deceased was going on motorcycle and when they reached near Ambedkar Bhawan, Phase 3B2 Mohali and crossed traffic signal, the offending vehicle had been parked by its driver in middle of the road in a very dangerous position without any indicator or parking lights. Sukhwinder Singh (deceased) could not notice and hit against parked Tempo with force from backside. There is no rebuttal to testimony of this witness. On perusal of reply filed by the appellant-Insurance Company, I find that Insurance Company has though taken the plea that alleged accident took place because of fault of deceased, who was driving the motorcycle in a rash and negligent manner and hit the offending vehicle, which was properly parked, but has not produced any evidence to prove this fact. Even to Navkaran Singh, eye-witness, no suggestion was given that the accident was caused due to contributory negligence of the deceased. The mere suggestion given to him was that no such accident had taken place, which he denied. His testimony that offending vehicle has been dangerously parked in the middle of the road is un-rebutted and proves that accident was caused due to negligence of driver of offending vehicle.

6. Keeping in view above facts and in the absence of any evidence on record, I find no reason to follow the conclusion drawn by coordinate Bench of this Court in case of **Smt. Harbans Kaur (supra)** in which case

there was *inter se* dispute between respondents and a criminal case had been

registered against driver of the car, which had hit the parked truck from behind and no negligence was attributed to driver of the truck, who had parked the same on left side of the road. Facts of the said case are distinguishable from facts of present case.

7. The instant appeal has no merit and the same is dismissed.

March 20, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No