

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

FAO-45-2013 (O&M) and
XOBJC-3-CII-2014
Reserved on:30.07.2018
Date of Decision:22.11.2018

New India Assurance Co. Ltd. ... Appellant
Versus
Chanan Kaur & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Neeraj Khanna, Advocate for the appellant in FAO-45-2013.
Mr. Chander Shekhar, Advocate for respondent No.1/cross-objector.
...

TEJINDER SINGH DHINDSA, J. (ORAL).
CM-720-CII-2014 in XOBJ-3-CII-2014:

In view of the averments made in the application and which is duly supported by an affidavit, delay of 258 in refiling the Cross Objections, is condoned.

Application is disposed of.

FAO-45-2013 (O&M) and XOBJC-3-CII-2014:

This order shall dispose of **FAO-45-2013 (New India Insurance Company Limited Versus Chanan Kaur & others)** and Cross Objections No.3-CII-2014 as these arise out of award dated 06.10.2012 passed by the Motor Accident Claims Tribunal, Rupnagar.

2. FAO-45-2013 has been filed at the hands of the appellant/ Insurance Company assailing the award dated 06.10.2012 passed by the Motor Accident Claims Tribunal, Rupnagar and in terms of which a compensation amount of Rs.3,56,000/- has been awarded on account of death of Rajinder Singh @ Lucky in a motor vehicle accident. Cross objections are filed at the hands of the claimants seeking enhancement of compensation.

3. Brief facts of the case are that a claim petition was filed under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.30 lakhs on account of death of Rajinder Singh @ Lucky in a motor vehicle accident that took place on 06.11.2009. Claimants were the parents and brother of the deceased. It was asserted that on the fateful day, at about 7:10 P.M., Rajinder Singh @ Lucky (since deceased) was proceeding on a motorcycle and was driving the same with due care and at a normal speed. When he was reached in the area of village Daroli, main road in front of Baba Balak Nath Mandir, then a truck/tanker bearing registration No.HR-38-M-8947 was standing on the road and without any parking lights or reflector. On account of the dazzling lights of the oncoming traffic, Rajinder Singh @ Lucky (Since deceased) struck into the rear portion of the stationery truck/ tanker. On account of the impact, Rajinder Singh @ Lucky suffered multiple grievous injuries and succumbed to the same. Accident is stated to have been witnessed by Tarlochan Singh S/o Teja Singh and Gurpal Singh S/o Gurdial Singh, who were following the deceased on their scooter. After the accident, eye witnesses, Tarlochan Singh as also Gurpal Singh brought Rajinder Singh @ Lucky to BBMB Hospital Nangal for treatment but he was declared dead on arrival. FIR No.123 dated 07.11.2009 was got registered on the statement of eye witness Tarlochan Singh.

4. Claim petition having been filed, the same was contested in terms of filing of written statement by respondent No.1, Vidya Dhar i.e. driver of the offending vehicle as also in terms of filing of a written statement by respondent No.3 i.e. the New India Insurance Company Limited. Respondent No.2 i.e. owner of the vehicle even though duly served

did not appear and was accordingly proceeded ex-parte by the Tribunal vide order dated 27.02.2012. Respondent No.1 i.e. driver of the offending vehicle in his written statement admitted the accident that took place on 06.11.2009 as also the FIR No.123 dated 07.11.2009 having been registered against him. He, however, stated that the claimants have claimed excess amount of compensation. Insurance Company in its written statement denied the accident and set up a plea that the claim petition had been filed by the claimants in connivance with the driver and owner of the vehicle. That apart, preliminary objections with regard to the driver of the offending vehicle not holding a valid and effective driving license at the time of the alleged accident was also taken. Yet another preliminary objection taken was that the offending vehicle was not having valid route permit and fitness certificate.

5. Upon the pleadings of the parties, the following issues were framed by the Tribunal:

“1. Whether Rajinder Singh received injuries in a vehicular roadside accident caused by respondent No.1 while driving a truck tanker No.HR-38M-8947 in a rash and negligent manner? OPP

2. Whether claimant is entitled to receive compensation as prayed for? If so to what extent and from whom? OPP.

3. Whether the claim petition is not maintainable? OPR.

4. Whether the respondent No.1 was not having a valid and effective driving license at the time of accident? OPR-3.

5. Relief.”

6. As regards issue No.1, findings were returned by the Tribunal in favour of the claimants and it was held that Rajinder Singh @ Lucky

received multiple grievous injuries in the accident that took place on account of negligence of respondent No.1 and who had parked the offending truck/tanker bearing registration No.HR-38-M-8947 without observing traffic rules and without making any indication that truck/tanker was parked as no reflectors or parking lights had been lit by him. The plea of collusion and connivance between the claimants and owner/driver of the offending vehicle was rejected by the Tribunal.

7. Insofar as quantum of compensation is concerned, Tribunal has taken age of the deceased as 22 years, assessed the monthly income as Rs.4000/-, applied multiplier of 14 and as such, computed the compensation amount at Rs.3,36,000/-. Over and above, a lump sum amount of Rs.20,000/- has been awarded towards loss of love and affection and funeral expenses. Claimants No.2 and 3, who were father and brother of the deceased were not held entitled to any amount of compensation as they had not proved their dependency upon the deceased. The compensation amount was held payable in favour of claimant No.1, Chanan Kaur i.e. mother of the deceased and the liability to pay the compensation amount was fastened upon the Insurance Company.

8. Mr. Deepak Suri, learned counsel representing the appellant/ Insurance Company in FAO-45-2013 has raised a solitary contention as regards contributory negligence. It was argued that in the present case the deceased was driving the motorcycle and had struck against the rear portion of the offending tanker/truck. As per counsel, the only conclusion that can be drawn under such circumstances is that the deceased himself was negligent and at the most, it is a case of contributory negligence. Reliance in

this regard is made to the decision of the Apex Court in **Raj Rani Vs. Oriental Insurance Company Limited, 2009 (ACJ) 2003 (SC)**.

9. Per contra, counsel for the claimants/respondents No.1, 2 and 3 has vehemently opposed the contention raised on behalf of the appellant/ Insurance Company and submits that it was entirely the fault of the offending/insured tanker/truck and which had been parked on the road during late evening hours and without adhering to the traffic rules.

10. Having heard counsel for the parties, this Court is of the considered view that contention raised on behalf of the appellant/Insurance Company as regards contributory negligence is without merit.

11. It is by now well settled that in the case of accident, each case has to be decided on its own peculiar facts and circumstances. No hard and fast rule can be laid down that if a vehicle strikes from the backside into a stationery vehicle, case of contributory negligence is made out.

12. In the present case, the claimants had examined PW2, Tarlochan Singh, who was an eye witness to the accident and who tendered his duly sworn affidavit, Ex.PW2/A and in which he had supported the version of the claimants in all material particulars. PW2 stated that on 06.11.2009 at about 7:10 pm, he was driving a scooter on which Gurpal Singh was pillion rider and about 100 yards ahead of them they noticed that Rajinder Singh @ Lucky (since deceased) was driving his motorcycle with due care and caution but when he reached in front of Baba Balak Nath Mandir then a truck/tanker bearing registration No.HR-38-M-8947 was parked without parking lights or reflectors and as such, without observing traffic rules. PW2 further stated that due to bright lights of the vehicles

coming from the opposite side, Rajinder Singh @ Lucky dashed/struck into the rear portion of the stationary tanker/truck. Driver of the offending vehicle has filed a written statement admitted the accident. He, however, did not enter the witness box. Even owner of the offending truck in spite of being served did not join the proceedings. Respondent No.1 i.e. driver of the offending vehicle was best witness to state that deceased Rajinder Singh @ Lucky had also been negligent. Since he did not step into the witness box, an adverse inference ought to be drawn against him. **In New India Insurance Company Limited Vs. Maya Wati & others, 1992 (ACJ) 620 (Delhi)**, it was held that if the bus is parked without any light and the three wheeler dashed against the stationary bus, in such eventuality, the driver was negligent in leaving the bus without any indicator and it was further held that it is not a case of contributory negligence at the hands of the deceased.

13. In view of the above, no merit is found in the appeal filed at the hands of the Insurance Company and the same is dismissed.

14. Insofar as the cross objections filed at the hands of the claimants are concerned, counsel would argue that the compensation amount awarded is grossly inadequate. The monthly income assessed by the Tribunal @ Rs.4000/- is on the lower side and no addition in income towards future prospects has been awarded.

15. Counsel for the contesting/Insurance Company has to the contrary supported the award insofar as quantum of compensation is concerned.

16. Having heard counsel for the parties on the issue of quantum of compensation, this Court is of the considered view that the compensation

amount would require to be re-visited and re-assessed.

17. The Tribunal has taken the age of the deceased as 22 years as on the date of accident by adverting to the age recorded in the Post Mortem Report Ex.P1. Even though, claimants had asserted that deceased was earning Rs.15,000/- per month, yet no cogent and credible evidence had come forth to substantiate such plea. The Tribunal by way of approximation has assessed the monthly income of the deceased to be Rs.4000/- in relation to the date of accident i.e. 06.11.2009. No intervention in this regard is called for.

18. The Tribunal, however, has completely overlooked the aspect with regard to addition in income towards future prospects. Keeping in view the age of the deceased and the claim set up by the claimants themselves that he was self employed, an addition in income @ 40% is awarded towards future prospects. Since deceased was a bachelor, 50% deduction would be made towards his personal and living expenses.

19. The Tribunal has erred in applying the multiplier of 14 keeping in view the age of claimant No.1 i.e. mother of the deceased. Tribunal ought to have applied the multiplier as per age of the deceased instead, in view of the the dictum laid down by the Apex Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** and **National Insurance Company Limited Vs. Pranay Sethi & others, 2017 (4) RCR (Civil) 1009**. Keeping in view the age of the deceased as 22 years, a multiplier of 18 to the multiplicand is directed.

20. Furthermore, the lump sum amount of Rs.20,000/- awarded by the Tribunal would now stand enhanced to Rs.30,000/- i.e. Rs.15,000/-

towards loss of estate and a like amount of Rs.15,000/- towards funeral expenses.

21. In view of the above, the compensation amount is re-assessed and calculated as follows:

Sr. No.	Computation/Head	Revised calculation
1.	Income as assessed by the Tribunal	Rs.4000/-
2.	Addition in income @ 40% towards future prospects	Rs.4000/- 4000+1600=5600/-
3.	50% deduction towards personal and living expenses of the deceased	5600-2800 = 2800
4.	Compensation after applying multiplier of 18	2800 x 12 = 33,600/- 33,600 x 18 =6,04,800/-
5.	Conventional Heads i.e. loss of estates, funeral expenses and loss of consortium etc.	Rs.30,000/-
6.	Total	6,04,800 + 30,000 = 6,34,800/-

22. The afore calculated enhanced compensation amount be released in favour of claimant No.1, namely, Chanan Kaur i.e. mother of the deceased along with interest @ 6% per annum from the date of filing of the cross objections till actual realization.

23. Disposed of.

22.11.2018
harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

- i) Whether speaking/reasoned?Yes/No
- ii) Whether reportable?Yes/No