

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

FAO-2470-2015 (O&M)
Date of decision:03.08.2018

National Insurance Co. Ltd.

... Appellant

Versus

Ashok Wati & others

... Respondents

CORAM: HON'BLE MR. JUTSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Neeraj Khanna, Advocate for the appellant.

Mr. R.S. Kundu, Advocate for the respondents.

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TEJINDER SINGH DHINDSA, J. (ORAL)

Appellant-National Insurance Company Limited has filed the instant appeal assailing the award dated 11.09.2014 passed by the Motor Accident Claims Tribunal, Palwal and in terms of which a compensation amount of Rs.8,94,465/- has been awarded in favour of the claimants.

2. Counsel for the appellant would submit that the insured vehicle has been wrongly involved in the accident. It is a case where the FIR had been lodged against unknown vehicle and unknown driver. Even the description of the vehicle or colour was not mentioned. Further urged that the claimants had not examined any independent witness to prove the accident and the testimony of PW1 Pardeep cannot be given due weight as he was an interested witness being the son of the deceased. Apart from contending that the vehicle was not involved in the accident, counsel has also raised submissions with regard to quantum of compensation. In this regard, it has been contended that the income of the deceased has been taken as Rs.5200/- per month whereas no evidence had been adduced on record to

substantiate the same. Counsel further argues that increase in income towards future prospects at the rate of 30% has been awarded inspite there being no evidence as regards occupation of the deceased.

3. Per contra, learned counsel for the claimants/respondents No.5 to 6 herein has submitted that the impugned award is well reasoned and has been passed upon due appreciation of evidence and does not call for any interference.

4. I have heard counsel for the parties at length and have perused the pleadings on record.

5. Brief facts are that the claim petition had been filed under Section 166 of the Motor Vehicle Act seeking compensation to the tune of Rs.25 lakhs on account of death of Sube Singh in an accident that took place on 25.01.2013. It was asserted that Sube Singh (since deceased) along with his son Pardeep were proceeding on a motorcycle and was struck by a Tata Sumo vehicle bearing registration No.HR-73-4388 being driven in a rash and negligent manner by Talewar Singh. Sube Singh is stated to have succumbed to the injuries suffered as a result of the accident on 28.01.2013. FIR No.44, dated 29.01.2013 was lodged under Sections 279/304-A IPC on the statement of Pardeep i.e. son of the deceased and who had also suffered injuries.

6. The driver and owner filed a joint written statement denying the accident. Insurance company also filed a written statement taking a stand that the vehicle had been falsely involved in the accident.

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

“1. Whether the respondent No.1 on account of his rash, negligent and reckless speedy driving of vehicle without blowing any horn and without observing the traffic rules, bearing registration No.HR-73/4388 caused death of Sube Singh? OPP

2. Whether the claimants are entitled to compensation, if so that what amount and from whom? OPP

3. Whether the petitioners have no locus standi and cause of action to file the present petition? OPR

4. Whether the insurer has violated the terms and conditions of insurance policy? OPR

5. Relief.”

8. The Tribunal has returned finding that the accident had occurred on 25.01.2013 involving the Tata Sumo vehicle bearing registration No.HR-73-4388 and which was being driven in a rash and negligent manner by the driver. As such, death of Sube Singh was as a result of the accident in which the afore noticed offending vehicle was involved.

9. As regards quantum of compensation, the Tribunal has assessed the monthly income of Sube Singh (since deceased) as Rs.5200/- per month. Increase in income on account of future prospects has been awarded at the rate of 30%. By taking the age of the deceased as 46 years old, multiplier of 13 has been applied. Tribunal has also awarded a sum of Rs.73,545/- towards medical expenses as the accident had occurred on 25.01.2013 and Sube Singh had died on 28.01.2013 and during such interregnum, had received treatment at Spero Hospital, Palwal. In this regard, Tribunal has taken notice of medical bills duly adduced and proved on record as Ex.PW4/A and Ex.P3 to P11. A total compensation amount awarded is Rs.8,94,465/-.

10. In the considered view of this Court, the submission raised by counsel for the appellant as regards false involvement of the vehicle is without merit. Even though, the FIR had been lodged against an unknown driver and unknown vehicle but subsequently, a supplementary statement of Pardeep PW1 had been recorded and a final investigation report/challan had been filed in which driver of the offending vehicle has been nominated as an accused. It would be material to take notice that Pardeep son of deceased Sube Singh was also involved in the accident and had suffered injuries on 25.01.2013. This may be taken as a plausible explanation for not being in a position to reveal the details of the offending vehicle. The Tribunal has drawn an adverse inference on the basis of the factual premise that the driver of the offending vehicle was facing criminal prosecution pursuant to FIR having been lodged for the accident in question. Even though, it was a stand taken on behalf of the driver and owner of the vehicle that they had been falsely implicated but it has been conceded by counsel for the appellant that no complaint had been lodged by them before the police authorities in such regard. Furthermore, it is a case where the driver of the offending vehicle did not even step into the witness box towards denial of the accident. It may also be noticed that the driver and owner of the offending vehicle are stated to be residents of a village Taharpur, District Aligarh, U.P., whereas claimants are from Palwal (Haryana). It is not the case set up on behalf of the Insurance Company that the claimants on the one hand and driver/owner of the offending vehicle were acquainted with each other and had set up a case in collusion and in connivance. Contention with regard to false involvement of the insured vehicle, as such, is rejected.

11. Insofar as the quantum of compensation is concerned, there is scope for a slight reduction in the same.

12. As regards monthly income of Rs.5200/- of the deceased and as assessed by the Tribunal, the same would not call for any interference. The claimants had asserted that monthly income of the deceased was Rs.30,000/- per month. No evidence had been led to substantiate such claim. Under such circumstances, the Tribunal keeping in view the minimum wages admissible to an unskilled worker and in co-relation to the date of accident i.e. 25.01.2013 has assessed the monthly income as Rs.52,00/-. The same is accepted. The increase in income towards future prospects has been awarded as 30%. The same would be liable to be reduced to 25% keeping in view the dictum laid down by the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009** as it was a case of the claimants themselves that deceased was self employed and was in the age group of 40-46 years.

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

Sr. No.	Computation/Head	Revised calculation
1.	Income Rs.5200/-	25% increase towards future prospects i.e. 5200+1300=6500/-
2.	1/4 th cut towards personal and living expenses of the deceased	6500-1625 = 4875/-
3.	Compensation after applying multiplier of 13	4875 x 12=58,500/- 58500 x 13 = 7,60,500/-
4.	Conventional Heads i.e. funeral expenses and loss of consortium etc.	Rs.30,000/- (as awarded by the tribunal)
5.	Medical Bills/treatment	73,545/-
6.	Total	7,60,500+30,000+73,545= 8,64,045/-

14. Appeal is disposed of in the aforesaid terms.

15. Since the main appeal itself has been decided, pending applications, if any, shall also stand disposed of.

03.08.2018

harjeet

(TEJINDER SINGH DHINDSA)

JUDGE

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No