

In the High Court of Punjab and Haryana at Chandigarh.

FAO-5762 of 2014 (O&M)

Date of Decision : 16.5.2018

Oriental Insurance Co. Ltd.

.....*Appellant*

Versus

Jasbir Kaur and others

.....*Respondents***CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present : Mr. Harsh Aggarwal, Advocate, for the appellant.

Mr. Ashwani Arora, Advocate for respondents No. 1 & 2.

Mr. B.S.Saini, Advocate for respondent No.4.

GURVINDER SINGH GILL J.

1. The insurer has filed this appeal challenging award dated 7.5.2014 passed by Motor Accident Claims Tribunal, SAS Nagar, Mohali whereby the petition filed by respondent No. 1 and 2 i.e. the claimants seeking compensation on account of death of their son Gurdeep Singh, aged 17 years, in a vehicular accident has been accepted and compensation to the tune of ₹ 16,70,000/- has been awarded.
2. The case set up by the claimants is that on 16.12.2012, Gurdeep Singh was going on a motorcycle bearing registration No.PB-65Q-7730 driven by Gurpreet Singh, which was being driven rashly and at a high speed and when they reached near Civil Hospital, Kurali, an unknown vehicle struck against the motorcycle, as a result of which Gurdeep Singh fell on the road and sustained injuries. The said Gurdeep Singh was taken to hospital but was declared dead. FIR was also registered in respect of the accident in question.

The claimants while asserting that the deceased Gurdeep Singh was studying in class 10+1 at Govt. Senior Secondary School, Village Mundho Sangatian, prayed for awarding compensation. The respondents resisted the claim petition and filed written statement denying all the material averments of the claim petition.

3. The parties were put to proof on the following issues :-

1. Whether Gurdeep Singh son of Jagtar Singh has died in a road side accident caused by respondent No.1 while driving a Motor cycle bearing No.PB-65-Q-7730, in a rash and negligent manner ? OPP.
2. Whether the claimants are entitled to receive compensation as prayed for, if so to what extent and from whom? OPC.
3. Whether the respondent No.1 was not holding valid and effective driving licence of the tractor in question at the time of accident? OPR
4. Whether the claimants have got no cause of action/locus standi to file the present claim petition ? OPR
5. Whether the claim petition is not maintainable? OPR
6. Relief.

4. The claimant Jasbir Kaur herself stepped into the witness box as PW-1 and also examined PW-2 Som Nath. In defence, the respondents Sarabjit Kaur and Gurpreet Singh stepped into the witness box as RW-1 and RW-2 respectively.

5. The learned Tribunal, upon appraisal of the evidence on record returned its findings on issue no.1 in favour of the claimants holding therein that it was a case of '*composite negligence*' wherein the driver of the motorcycle i.e. Gurpreet Singh as well as driver of unknown vehicle had both contributed in

causing accident.

6. The learned Tribunal, thus, awarded compensation to the tune of ₹ 16,70,000/- to the claimants.
7. The learned counsel for the Insurer has assailed the impugned award, firstly on the ground that FIR in question had been lodged at the instance of Jagtar Singh, father of the deceased, who being the first informant would have been the best person to depose about the manner of accident but he having shied away from stepping into the witness box, an adverse inference ought to be drawn against claimants. The learned counsel has further submitted that PW-2 Som Nath apparently is an “introduced” witness as his name nowhere figures in the FIR and that in these circumstances, his testimony cannot be relied upon so as to hold that the deceased had lost his life on account of *composite negligence* of both the drivers.
8. I have considered the aforesaid submission.
9. It is correct that Jagtar Singh, father of the deceased, has not been examined by the claimants, but it is apparent that Jagtar Singh had in fact not witnessed the accident and had reached there shortly after the accident had taken place, as has been mentioned in the FIR itself. In these circumstances, no adverse inference can be drawn against the claimants for not having examined Jagtar Singh. On the other hand, PW-2 Som Nath has categorically stated that he had witnessed the accident in question and has narrated the manner of accident wherein he has stated that the motorcycle on which the deceased was a pillion rider was being driven at a high speed and it had overtaken him but immediately thereafter an unknown vehicle struck against the motorcycle as a result of which both the driver and the pillion rider of the motorcycle fell

down. Nothing could be brought about during cross-examination of the said witness so as to doubt his credibility. Though respondent no.1 Gurpreet Singh has stepped into the witness box as RW-2 but there is nothing substantial in his statement so as to rebut the manner of accident, as stated by PW-2 Som Nath. It is noteworthy that in statement of Gurpreet Singh recorded on 18.4.2014, he has categorically stated that as on 16.12.2012, he did not possess the driving licence and at that time he was not even 16 years.

10. In view of the discussion made above wherein I find PW-2 Som Nath has categorically stated about the manner of accident indicating that it is a case of *composite negligence* and also bearing in mind the fact that infact Gurpreet Singh was not even possessing a driving licence and was in fact ineligible to hold a driving license on the date of accident, this Court does not find any reason to interfere in the findings of the learned Tribunal as regards *composite negligence* of Gurpreet Singh, who was driving the motorcycle and of driver of said unknown vehicle.
11. Though, learned counsel for the appellant also assailed the award on the ground that the claim petition is bad on account of non-joinder of parties inasmuch as the owner and driver of the said unknown vehicle have not been arrayed as party but the aforesaid contention cannot be accepted as in a case of *composite negligence* where the identity of second vehicle cannot be ascertained, the claim petition cannot be defeated on account of non-joinder of such owner or driver of unknown vehicle. The aforesaid contention is devoid of merits and is repelled.
12. Learned counsel for the insurer has next assailed the computation of quantum of compensation and has submitted that the notional income of deceased, as

assessed by the learned Tribunal as ₹ 10,000/- is on the higher side since the deceased was just a student. The learned counsel cites judgment of Hon'ble Supreme Court reported as 2013(4) RCR (Civil) 276 Kishan Gopal and another vs. Lala and others wherein in case of death of a child aged 10 years, his notional income had been assessed as ₹ 30,000/- per annum.

13. I have considered the aforesaid submission and have also perused the cited judgment.
14. A perusal of cited judgment shows that it was a case where death had taken place in the year 1992 whereas in the present case, the accident had occurred in the year 2012 i.e. after almost 20 years and the notional income as assessed in 1992 cannot be made applicable in 2012. Thus, I do not find any valid reason to interfere in the assessment of income, which has been assessed as ₹ 10,000/- per month. However, I find that amount added on account of '*future prospects*' which has been added to the extent of 50% of assessed income is slightly on the higher side and needs to be scaled down a little. Keeping in view the dictum of Hon'ble Supreme Court in (2017) 16 SCC 680 - National Insurance Company Ltd. vs. Pranay Sethi and others, the amount towards "*future prospects*" cannot be more than 40% of the income. Even the amounts awarded towards loss to estate and funeral expenses @ ₹ 25,000/- each need to be reduced to ₹ 15,000/- each as per Pranay Sethi's case (supra).
15. In view of the discussion made above, the appeal is partly allowed and the quantum of compensation awarded is reduced by taking the *future prospects* as 40% instead of 50%, In other words, as against ₹ 5,40,000/- which was added to the compensation towards *future propsects*, it is an amount of ₹ 4,32,000/-, which should be added. The amounts towards funeral expenses and loss to

estate also need to be reduced from ₹ 25,000/- to ₹ 15,000/- under each of the head in terms of Pranay Sethi's case (supra). Consequently, the total compensation would stand reduced by ₹ 1,28,000/- (₹ 1,08,000/- on account of reduction of future prospects by 10% and reduction of ₹ 10,000/- each in compensation towards funeral expenses and loss to estate). Thus, the total compensation to which the claimants are entitled to would be ₹ 15,42,000/-.

16. The appeal stands partly accepted with the aforesaid modifications.

(Gurvinder Singh Gill)
Judge

16.5.2018

Kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No