

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 8210 of 2014(O&M)

Date of Decision: August 16 , 2018.

Shri Ram General Insurance Company Ltd.

..... APPELLANT (s)

Versus

Baljeet Kaur and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Tajender K.Joshi, Advocate
for the appellant.

Mr. Gurmeet Singh Saini, Advocate
for respondents No.1 and 2.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

CM No.22271-CII of 2017

There is a delay of 45 days in filing of the appeal.

For the reasons mentioned in the application as well as arguments addressed, delay of 45 days in filing of the appeal is condoned.

Application is allowed.

FAO No.8210 of 2014(O&M)

This appeal has been filed by the Insurance company challenging

award dated 16.04.2014 passed by the learned Motor Accident Claims Tribunal, Ferozepur (for short, the 'Tribunal').

Brief facts necessary for adjudication of the case are that, respondents No.1 and 2/claimants had filed a petition under Sections 166 and 140 of the Motor Vehicles Act seeking compensation on account of the death of Jaswinder Singh in a motor vehicle accident which took place on 26.02.2012 due to the rash and negligent driving of Indica car bearing registration No.HR-03J-2697 by respondent No.3 – Ramandeep Sharma. In this respect, DDR No.8 dated 02.03.2012 was lodged at Police Station Ghall Khurd, District Ferozepur.

From pleadings of the parties, the learned Tribunal framed the following issues:-

- “1. Whether Jaswinder Singh son of Jora Singh had died on accident of injuries sustained by him in a motor vehicular accident which took place on 26.2.2012 at 12.30 a.m. in the area of village Kot Karor Kalan, P.S.Ghall Khurd, District Ferozepur due to rash and negligent driving of car bearing registration No.HR-03J-2697 by respondent no.1? OPA
2. Whether the claimants are entitled to the compensation, if so to what extent and from whom? OPA
3. Whether the petition is not maintainable? OPR
4. Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPR
5. Whether respondent no.1 was not holding valid and effective driving licence at the time of alleged accident?OPR-2
6. Relief.”

The learned Tribunal on consideration of the facts and evidence on record decided Issue No.1 in favour of the claimants. It has been held by the learned Tribunal that the deceased-Jaswinder Singh died due to the injuries sustained by him in the accident which took place on 26.02.2012 due to the rash

and negligent driving of the offending car bearing registration No.HR-03J-2697 by respondent No.3-Ramandeep Sharma.

The learned Tribunal awarded a total sum of ₹6,41,000/- as compensation to the claimants vide impugned award dated 16.04.2014. The deceased was stated to be working as security guard at Axis Bank ATM, Moga. He was stated to own agricultural land, besides an income from sale of milk. After taking into consideration the facts and circumstances of the case, the learned Tribunal assessed the income of the deceased to be ₹4,000/- per month considering him to be an unskilled labourer. While calculating the amount of compensation, deduction of 1/4th on account of personal expenses was effected. Multiplier of 16 was applied keeping in view that the age of the deceased was 35 years. Actual medical expenses to the tune of ₹35,000/- were awarded. ₹30,000/- were awarded by the learned Tribunal on account of funeral expenses.

Learned counsel for the appellant-Insurance company argues that FIR was not registered in this case against the driver of the vehicle in question. It is only a DDR (Ex.C1) which was lodged in this case. It is thus prayed that there is no negligence on the part of the driver of the offending vehicle. It is further contended that income of the deceased has been assessed on a higher side. It is submitted that deduction of 1/3rd instead of 1/4th should have been effected keeping in view the number of dependants. It is thus prayed that this appeal be allowed.

Learned counsel for respondents No.1 and 2/claimants refutes the abovesaid averments and prays for upholding the impugned award.

I have heard learned counsel for the parties and have perused the

record.

It is relevant to note at the outset that presence of respondent No.3 i.e. driver of the offending vehicle in this case was dispensed with on 16.10.2015 in view of the stand of the Insurance company. It is not a case where the insurance company seeks recovery rights. As per the claim petition, the deceased-Jaswinder Singh alongwith Lakhwinder Singh (CW2) were going towards village Kot Karor Kalan on foot on 26.02.2012 from the main chowk Talwandi Bhai. It is specifically stated that when they had walked about a half kilometer from the said chowk, one Indica car bearing registration HR-03J-2697 being driven by respondent No.3-Ramandeep Sharma in a rash and negligent manner at a very high speed, came from the side of Faridkot. A stray cattle came on the road and in order to avoid hitting the cattle, the driver applied brakes but lost control over his car as it was driven at a very high speed. The car struck against Jaswinder Singh and dragged him for some distance and threw him on the unmetalled portion of the road. Jaswinder Singh received multiple injuries. He was taken to Shri Guru Gobind Singh Medical College and Hospital, Faridkot. Jaswinder Singh ultimately succumbed to his injuries on 02.03.2012. DDR No.8 dated 02.03.2012 was lodged on the statement of CW2-Lakhwinder Singh, an eye-witness of the accident. It is clearly explained that the complaint was not lodged with the police at an earlier point of time because talks of an amicable settlement with respondent No.3-Ramandeep Sharma were in progress. However, Ramandeep Sharma later expressed his inability to compromise the matter when Jaswinder Singh died on 02.03.2018. Immediately thereafter, the DDR (Ex.C1) was lodged.

Argument raised by learned counsel for the appellant that the

accident in question is not proved to have occurred, is devoid of any merit. Respondent No.3-Ramandeep Sharma, who was driving the offending vehicle has testified as RW1. He has admitted the accident in question, though it is sought to be explained that he was not at fault. The accident took place because a stray cattle suddenly came on to the road and in order to avoid hitting the cattle, the car hit the deceased. Therefore, it cannot be said that the accident in question never took place. A perusal of cross-examination of RW1 further reveals that it is admitted that the deceased was walking on the correct side of the unmetalled (Kaccha portion) part of the road. It has been admitted that the road is wide enough for four vehicles to pass simultaneously. It is thus rightly held by the learned Tribunal that the accident in question did take place on 26.02.2012. Post-mortem report dated 02.03.2012 (Ex.C10) reveals that Jaswinder Singh died due to the injuries sustained by him in the said accident. The learned Tribunal has thus rightly decided Issue No.1 in favour of the claimants by holding that the accident had occurred due to the rash and negligent driving of the offending vehicle by respondent No.3-Ramandeep Sharma.

In respect to the quantum of compensation, the deceased-Jaswinder Singh was stated to be working as a Security Guard at Axis Bank ATM, Moga earning ₹4,820/- per month. It is further averred that he had agricultural land and sold milk. Thus, the deceased was stated to be earning ₹25,000/- per month. However, the learned Tribunal assumed the deceased to be a simple labourer and assessed his income to be ₹4,000/- per month. It is to be noticed, at this stage, that minimum wages in the State of Punjab at that time were approximately ₹6,000/- per month. Keeping in view the factual matrix of the case, I do not find

any ground whatsoever to vary the amount of compensation awarded to the claimant.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned award dated 16.04.2014 passed by the learned Motor Accident Claims Tribunal, Ferozepur which warrants interference by this Court.

Appeal is accordingly dismissed.

August 16 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No