

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

FAO No.3704 of 2017 (O&M)

Date of Decision: July 04, 2018

National Insurance Company Limited

...Appellant

Versus

Kamlesh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Harjinder Singh, Advocate
for the appellant - insurer.

Mr.Gurmail Singh Duhan, Advocate
for claimants – respondents No.1 to 6.

Mr.P.K.Saini, Advocate for
respondent No.8.

HARINDER SINGH SIDHU, J.

By filing the present appeal, the Insurance Company has challenged the award dated 20.01.2017 passed by the Motor Accident Claims Tribunal, Kaithal (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 22.03.2015 Krishan (deceased) was going to his village Pai after shutting down his mechanic shop at village Dhand. He took a lift on a truck/container No.HR-55S-9132 (herein for short 'the offending vehicle'). When the offending vehicle reached near old bus stand and Krishan was stepping down from it, the driver of the offending vehicle started the truck with full speed, as a result Krishan fell down and crushed under its tyres. He died at the spot.

The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR No.101 dated 22.3.2015 under Sections 279, 304-A IPC was registered in Police Station Pundri, District Kaithal against Neeraj – respondent No.7.

On a claim petition having been filed by the legal representatives of Krishan, the Tribunal assessed the income of the deceased at Rs.8000/- per month and awarded Rs.13,10,000/- as compensation. The liability to pay the compensation was fastened upon the appellant – Insurance company.

Challenging the impugned award, Ld. Counsel for the appellant – insurer has argued that the Tribunal has assessed the income of the deceased at Rs.8000/- without any basis. The deceased was neither an employee nor owner of the goods. Thus he was travelling as gratuitous passenger in a goods vehicle and as such the insurance company could not be held liable.

I have heard Ld. Counsel for the parties and gone through the records with their assistance.

So far as the assessment of the income of the deceased at Rs.8000/- per month is concerned, the Tribunal has so adjudicated on the basis of evidence led by the claimants – respondents. The relevant discussion of the Tribunal reads as under:-

“16. Now, the question arises as to what should be the amount of compensation. Claimants have examined PW-3 Hawa Singh who have stated that he had rented a shop to deceased Krishan Kumar in the year 2003 @ Rs.600/- per month. He was taking a rent of Rs.2000/- these days. Copy of participation in Eicher Training School Ex.PF has also been placed on record to prove that he was a technical hand. Along with that a letter from New Tempo Union Dhand (Kaithal)

Ex.PH on the record that the deceased was working as a mechanic there and was earning Rs.8000-10000/-.....”

It was on the basis of the above evidence that the Tribunal held that the deceased was working as a mechanic.

Dealing with compensation claims of self employed persons from the un-organized sector, in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd., (2011) 13 SCC 236**, the Hon'ble Supreme Court has held that persons from the un-organized sector doing their own business cannot be expected to produce documents to prove their income. In such cases, if the claim with regard to income is not exorbitant or excessive, but, is in consonance with the ground realities then it can be accepted even without documentary evidence in support thereof. This view was followed by the Hon'ble Supreme Court in **Syed Sadiq v. United India Insurance Co. Ltd., (2014) 2 SCC 735**.

The accident had occurred in March, 2015. Considering that and the evidence on record, I do not find the assessment of the income of the deceased at Rs.8000/- as excessive or exorbitant. There is no ground to interfere with the same.

Regarding the plea of the deceased being a 'gratuitous passenger', it is the admitted case of the parties that the deceased had taken lift in the offending vehicle and the accident occurred when the deceased was descending from the offending vehicle as the its driver drove the vehicle crushing Krishan, resulting into his death. At the time of accident, the deceased was not a passenger, rather a 'third party' as the accident was not caused while he was travelling in the offending vehicle. The Tribunal also

relied upon the version of the FIR, which reveals that the deceased had already stepped down from the offending vehicle, but the driver of the offending vehicle drove it suddenly at high speed in a rash and negligent manner and Krishan fell on the road and was crushed under its wheels. It was specifically recorded in the FIR that the accident was caused due to rash and negligent driving of the offending vehicle after Krishan had stepped down from it. Accordingly, the plea of 'gratuitous passenger' raised on behalf of the appellant – insurer also cannot be accepted.

No other argument was raised.

Finding no ground to interfere in the impugned award, the appeal is dismissed.

July 04, 2018

(HARINDER SINGH SIDHU)

JUDGE

gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No