

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

FAO No.1551 of 2018 (O&M)

Date of Decision: March 22, 2018

The New India Assurance Company Ltd.

...Appellant

Versus

Nitin Kumar and others

...Respondents

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

Present: Mrs.Vandanaa Malhotra, Advocate
for the appellant – Insurance Company.

HARINDER SINGH SIDHU, J.

The Insurance Company has filed the present appeal challenging the award dated 13.10.2017 passed by the Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 10.09.2016 Sarita (since deceased) was going towards her village Raghunathpura riding scooty No.HR-35J-4859 being driven by her mother Sushila (since deceased). At about 3.30 p.m., when they reached near Saini Brick Kiln, a vehicular accident took place involving Tralla No.HR-63C-2708 (herein for short 'the offending vehicle'), wherein, both the occupants of the scooty suffered grievous injuries and succumbed to the same. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered on the same day.

In the claim petition filed by the legal representatives of deceased Sushila, the Tribunal assessed the income of the deceased at Rs.8200/- per month, deducted 1/4th towards her personal expenses, applied the multiplier

of 14 (deceased aged about 45 years). The loss of dependency was assessed at Rs.10,33,200/-. Besides, sum of Rs.1,00,000/- towards 'loss of consortium', Rs.10,000/- as 'funeral expenses' and Rs.10,000/- towards 'loss of estate' were awarded. In all, compensation of Rs.11,53,200/- along with interest was awarded.

Challenging the impugned award, Ld. Counsel for the appellant – insurer has contended that (i) the income of the deceased is assessed without any basis and amounts under the conventional heads are also on the higher side and (ii) the deceased, driver of the Scooty was not holding a valid driving license.

I have heard Ld. Counsel for the appellant and perused the paper-book with his assistance.

In this case, the accident had occurred on 10.9.2016, wherein, two women, riding a scooty lost their lives. FIR No.439 under Sections 279, 304-A, 427 IPC was registered on the same day against the driver of the offending vehicle i.e. Roshan Lal son of Jai Narayan, Caste Gurjar resident of Village Paniala, District Jaipur. After completion of investigation, the Police concluded that Roshan Lal (respondent No.6 herein) was rash and negligent in driving the offending vehicle and it filed charge-sheet against him in the Court of Ilqa Magistrate. To controvert the above allegations, the driver of the offending vehicle, even did not choose to enter the witness box. In these circumstances as also in view of the evidence discussed above, the Tribunal was justified in concluding that the accident was caused due to rash and negligent driving of the offending vehicle.

To prove the income of the deceased Sushila, PW8 Imarti and

PW9 Babli deposed before the Tribunal. Both of them asserted that the deceased was doing the work of tailoring and embroidery. It is also admitted case that the deceased was a able-bodied person and at the time of accident, she was driving the scooty herself along with her daughter Sarita, who was the pillion rider. Though, no documentary proof was placed on record by the claimants, but in view of the oral evidence of PW8 and PW9 as also the fact that the deceased was an able-bodied person, aged about 45 years, the assessment of her income at Rs.8200/- as per the prevalent minimum wages in September, 2010, cannot be termed on higher side.

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**.

Referring to the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680**, Ld. Counsel for the appellant has contended that amount of Rs.1,00,000/- awarded under the conventional head i.e. 'loss of consortium', is on higher side. Undoubtedly, the aforesaid decision has restricted the amount under this head to Rs.40,000/- only, but as per this decision while

assessing the loss of dependency, increase in the income towards future prospects is also to be granted. In the present case, if the future prospects are granted @ 25% as the deceased was 45 years old at the time of her death, the compensation payable will be on higher side.

Hence, there is no ground to interfere in the findings of the Tribunal regarding the negligence of the driver of the offending vehicle or the assessment of the income of the deceased and the compensation awarded.

So far as the contention that the deceased was not holding a valid driving licence at the time of the accident while driving the scooty, is concerned, on the cost of repetition, it is reiterated that the evidence led by the parties has proved on record that the accident had been caused by rash and negligent driving of the offending vehicle i.e. a Tralla, which hit the scooty. The deceased was not at fault while driving the scooty. Thus, the question that she was not holding a driving license is not relevant as it was proved that the accident had been caused due to rash and negligent driving of the offending vehicle and not the scooty.

In view of above, there is no ground to interfere in the impugned award.

Appeal dismissed.

March 22, 2018

(HARINDER SINGH SIDHU)

JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No