

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

FAO No.1558 of 2018 (O&M)

Decided on:-March 23, 2018.

The Oriental Insurance Company Limited.

.....Appellant.

Versus

Gian Mati and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Ram Avtar, Advocate
for the appellant.

HARI PAL VERMA, J. (Oral)

The appellant-insurance company has filed the present appeal impugning the award dated 07.11.2017 passed by the Motor Accidents Claims Tribunal, Ferozepur (for short, the Tribunal), whereby on a claim petition filed by the respondents No.1 to 5-claimants under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), the Tribunal had awarded total compensation of Rs.7,19,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization of the amount on account of the death of Rama Kant, who was the husband of claimant No.1 and father of claimants No.2 to 5, and died due to the injuries sustained by him in a motor vehicular accident, which took place on 26.07.2015 at about 4.30 A.M. near H.S. Bhullar School, Mansa-Barnala G.T. Road, Police Station Tappan in the area of Dhanaula.

Briefly stated, the respondents No.1 to 5-claimants had filed a claim petition under Section 166 of the Act with the averments that on 25.07.2015, Rama Kant (since deceased) along with driver Ashok Kumar and conductor Akash started their journey from Delhi to Ferozepur on a canter bearing registration No.PB-05Q-9598. The canter was owned by respondent No.6 Rajinder Kumar and was loaded with vegetables. Rajesh Chanana and Vikas Chanana are the sons of respondent No.6 and they were following the canter in their car. On 26.07.2015, at about 03.30 A.M., the canter stopped in Mansa Mandi, from where the vegetables were lifted. Thereafter, the canter proceeded towards Ferozepur via Barnala city. At about 04.30 A.M., when the canter reached near H.S. Bhullar School, Mansa-Barnala G.T. Road, a sharp light of an unknown vehicle reflected in the eyes of driver Ashok Kumar due to which the offending canter became unbalanced and had gone out of control. The canter turned turtle and struck with Tahli (Shisham) trees on the right side of the road. The tree fell on the offending canter and as a result thereof, the canter caught fire. The occupants of the canter, namely, Rama Kant, Ashok Kumar and Akash died at the spot on account of burn injuries. The matter was reported to the police by Vikas Chanana.

The claimants had pleaded that deceased Rama Kant was about 50 years of age at the time of accident and was working with Satguru Fruit Company. He was drawing a salary of Rs.6,000/- per month and besides this, he used to go with the vehicles of other commission agents and thus, was earning a total of Rs.25,000/- per month.

Vide the impugned award dated 07.11.2017, the Tribunal had recorded a finding that the accident took place on account of negligence on the part of driver of the canter, namely, Ashok Kumar due to which Rama Kant died in the said accident. The Tribunal had observed that deceased Rama Kant was about 52 years of age at the time of his accidental death and assessed his income as Rs.6,000/- per month. After making 1/4th deduction from the income of the deceased towards his personal and living expenses, the monthly dependency of the claimants was assessed as Rs.4,500/- per month and the annual dependency was assessed as Rs.54,000 (4500 x 12).

In view of the law laid down in ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another***, a multiplier of '11' was applied by the Tribunal as the deceased was in the age group of 51-55 years. Thus, the total loss of dependency was assessed as Rs.5,94,000/- (54000 x 11). The Tribunal also awarded Rs.25,000/- for funeral expenses and Rs.1,00,000/- on account of loss of consortium. Thus, a total compensation amount of Rs.7,19,000/- was awarded by the Tribunal.

Aggrieved against the impugned award dated 07.11.2017 passed by the Tribunal, the appellant-insurance company has filed the present appeal.

Learned counsel for the appellant-insurance company has argued that the Tribunal has wrongly awarded the compensation and the very ingredient of rash and negligent driving has not been proved in the case. At the most, the claimants can be awarded compensation under no fault liability only. He has further argued that it is beyond imagination that at the time of accident, which had taken place at about 04.30 in the morning, Rajesh

Chanana and Vikas Chanana would be following the canter in their separate car. Moreover, when the canter got unbalanced because of the reflection of light of an unknown vehicle in the eyes of driver Ashok Kumar, it does not amount to rash and negligent driving on the part of the driver of offending canter.

I have heard learned counsel for the appellant-insurance company.

There is no dispute that deceased Rama Kant had died in the accident as the offending canter turned turtle and struck with the Tahli trees on the right side of the road. The plea of learned counsel for the appellant that it is beyond imagination that at the time of accident Rajesh Chanana and Vikas Chanana would be following the canter in their separate car, cannot be accepted as both of them are admittedly, the sons of respondent No.6 Rajinder Kumar, the owner of the offending canter and thus, it is not unusual that the owners cannot follow their vehicle. Moreover, Rajesh Chanana and Vikas Chanana were following the canter, which was loaded with vegetables.

So far as the plea of learned counsel for the appellant that there was no rashness and negligence on the part of driver of the canter is concerned, the same cannot be accepted for the reason that though the accident had taken place due to reflection of the light of an unknown vehicle in the eyes of driver Ashok Kumar, even then driver Ashok Kumar was required to take all precautions while driving the offending canter. Thus, it cannot be denied that the accident was not caused because of negligence on the part of driver of the truck.

No doubt, in view of the law laid down by Hon'ble Supreme Court in *National Insurance Company Limited Versus Pranay Sethi and others 2017(4) RCR (Civil) 1009*, the claimants are entitled to Rs.70,000/- only under the conventional heads, whereas the Tribunal has granted compensation of Rs.1,25,000/- on this count, but at the same time, the Tribunal has not awarded compensation under the future prospects. Since the claimants are not in appeal before this Court, their (claimants') right for future prospects is not being adjudicated upon. However, in case such like appeal is preferred by the claimants for enhancement of compensation claiming future prospects, the amount awarded by the Tribunal under the conventional heads would be considered and decided accordingly.

In view of the above, this Court does not find any merit in the present appeal and the same is, accordingly, dismissed.

Since the main appeal has been dismissed, pending civil miscellaneous application, if any, also stands dismissed.

March 23, 2018

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No