

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

**FAO No.2538 of 2018 (O&M)
Date of Decision: May 09, 2018**

National Insurance Company Ltd.

...Appellant

Versus

Kamalpreet Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.C.Kapoor, Advocate
for the appellant.

INDERJIT SINGH, J.

Appellant National Insurance Company Ltd. has filed this appeal against respondents Kamalpreet Kaur, Hardeep Kuar, Gurnam Singh (claimants), Anil Kumar, driver and Dinesh Kumar, owner of truck No.HP-12C-2331, challenging the impugned Award dated 02.01.2018 passed by learned Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as 'Tribunal'), vide which ₹27,98,200/- along with interest at the rate of 9% per annum from the date of filing of the petition till the realization of the same, has been awarded to the claimants on account of death of Gurpreet Singh in a motor vehicular accident.

The perusal of the record shows that Kamalpreet Kaur, Hardeep Kaur and Gurnam Singh, claimants filed a claim petition against Anil Kumar, driver, Dinesh Kumar, owner and National Insurance Company

Ltd., Insurer of truck bearing registration No.HP-12C-2331. The brief facts of the case as noted down in the impugned Award by learned Tribunal are as under:-

“2- It is the version of the claimants that on 12.12.2016, their predecessor Gurpreet Singh was going from his village Tepla towards Barwala on a motorcycle bearing registration no. PB-25-D-7296 on left hand side on the road at a moderate speed. At about 7:15 AM when he reached near village Ganni Khera, on Barwala Handesra road, in the meantime, a Truck No. HP-12-C-2331 came from opposite side being driven by its driver in a rash and negligent manner and struck the same against motorcycle of Gurpreet Singh, as a result of which he fell down on the road and received multiple grievous injuries and died on the spot. The said accident was witnessed by Manjinder Singh son of Bhajan Singh of village Raiwali. After causing the accident, the driver fled away from the spot on his truck. It is further averred that deceased was 24 years of age and was hale and hearty at the time of accident. He was working as electrician with a private company and used to get salary to the tune of Rs. 15,000/- per month. Besides, this he used to work as electrician in village after duty hours and earned Rs. 10,000/- per month. Due to his untimely death, the claimants have suffered great mental and financial loss . He was only bread winner of the family and claimants were fully dependent upon his income. Their future has become dark. They had spent more than Rs. 80,000/- on the last rites and transportation of the deceased.”

Notice of the claim petition was issued to respondents.

Respondents No.1 and 2 in the claim petition, appeared jointly and contested the claim petition by denying that said accident. They, rather, stated that their vehicle was wrongly involved in the case to get illegal compensation. Respondent No.3-Insurance company also contested the claim petition.

From the pleadings, following issues were framed:-

*“1. Whether Gurpreet Singh son of Gurnam Singh died in Motor Vehicle Accident due to rash and negligent driving of Truck No. HP-12-C-2331 by respondent no.1 on 12.12.2016?
OPP*

2. Whether the vehicle in question was being plied without RC, permit and other necessary documents?OPR3

3. Whether respondent no.1 was holding a valid driving license at the time of accident?OPR 1

4. Whether the claimants are entitled for compensation from the respondents, if so to what extent and from whom?OPP

5.Relief.

To prove their case, claimants examined claimant Hardeep Kaur as PW-1, PW-2 Manjinder Singh, eye witness and tendered into evidence, copies of FIR, PMR, Salary Certificate, death certificates, birth certificate of Kamalpreet Kaur and chargesheet. On the other hand, respondents No.1 and 2 closed the evidence after tendering into evidence Aadhar Card, Insurance Policy, driving licence of respondent No.1, registration certificate of truck, permit and fitness certificate.

Learned Tribunal decided issue No.1 in favour of the claimants and issues No.2 and 3 against respondent-insurance company. Award of ₹27,98,000/- was passed by learned Tribunal on 02.01.2018, out of which, 30% of Award amount was given to o mother and father each and 40% to minor daughter of the deceased.

Aggrieved from the above-said Award, present appeal has been filed by the Insurance Company.

Learned counsel for the appellant mainly argued on the point of negligence and that there is delay in recording the FIR. The number of the truck and name of the driver have not been mentioned in the FIR. The FIR was got registered by father of the deceased Gurpreet Singh but he was not examined.

The perusal of the record shows that in the present case, the

accident itself has been denied by driver and owner, as per their written statements. Secondly, it is admitted that PW-2 Manjinder Singh, is the eye witness to the occurrence and he has been examined by the claimants. It is also admitted at the time of arguments that Manjinder Singh has been cited as witness in the criminal case also and challan has already been presented and also the chargesheet has been served upon the driver of the truck. The driver has not stepped into the witness box to deny the accident or to depose that accident has not occurred due to his negligence. The father of the deceased, admittedly, was not an eye witness to the occurrence, therefore, his non-examination will be of no consequence. Mere fact that there is some delay in recording the FIR etc., cannot itself prove that no accident took place or the driver of the truck was not negligent. There is also nothing on the record to show that no accident has occurred with the truck in question.

Keeping in view the above facts, I find that there is no merit in the arguments of learned counsel for the appellant.

As regarding the quantum, I find that as per case of the applicants, the deceased was stated to be Electrician with a private company. The salary slip has been placed on record and the Court below has assessed his income as ₹12,700/- per month. If it is taken that deceased was Electrician, it means that he is a skilled worker. Now-a-days, even a labourer earns ₹300-₹400/- per day and skilled worker earns more. Even if it is taken that deceased was earning ₹500/- per day, even then, the income of the deceased assessed by learned Tribunal, cannot be held as excessive. Rather, only ₹15,000/- has been awarded as funeral expenses and ₹40,000/-

for love and affection. No other amount on other accounts has been

awarded by the Tribunal. In no way, it can be held that excessive amount has been awarded by learned Tribunal.

Therefore, finding no merit in the present appeal, the same is dismissed.

May 09, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No