

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

FAO No.5217 of 2017 (O&M)

Date of Decision: July 13, 2018

National Insurance Company Limited

...Appellant

Versus

Gurmeet Kaur and others

...Respondents

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

Present: Mr.Suman Jain, Advocate assisted by
Mr.Man Mohan, Advocate
for the appellant – Insurance Company.

Mr.S.S.Swaich, Advocate
for claimants – respondents.

HARINDER SINGH SIDHU, J.

The insurer has filed the present appeal challenging the award dated 17.3.2017 passed by the Motor Accident Claims Tribunal, SAS Nagar Mohali (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 15.2.2011 at about 6.45 p.m. in the area of village Khanpur on Morinda-Chandigarh road, a vehicular accident took place involving motorcycle No.PB-65M-4178 (herein for short 'the offending vehicle'), wherein, Jagdish Singh suffered multiple injuries and succumbed to the same during treatment at PGI, Chandigarh. 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 a claim petition having been filed by the legal representatives

of Jagdish Singh, the Tribunal assessed his income at Rs.9000/- per month, added 50% towards future prospects, deducted 1/4th towards his personal expenses, applied the multiplier of 15 (deceased aged 36 years). The loss of dependency was assessed at Rs.18,22,500/-. Rs.1,00,000/- towards 'loss of consortium', Rs.25,000/- as 'funeral expenses' and Rs.1,00,000/- towards 'love and affection' were also awarded. In all, compensation of Rs.20,48,000/- (rounded off) along with interest was awarded, payable by the appellant insurer.

Challenging the Award, Ld. Counsel for the appellant – Insurer has argued that the finding of the Tribunal that the accident was caused due to rash and negligent driving of the offending vehicle is not based on proper appreciation of evidence. His contention is that the offending vehicle was in fact not involved in the accident. He has also argued that though the Tribunal treated the deceased as a daily wager, but it erred in assessing his income at Rs.9000/- per month, without any basis. It is submitted that the assessment of income ought to have been made as per the minimum wages prevalent at the relevant time in the State.

I have heard Ld. Counsel for the parties and perused the record with their assistance.

In his written statement, though, respondent No.5 Navjot Singh, driver of the offending vehicle, admitted the accident, but made an endeavour to shift the fault to the driver of Maruti Car No.DL-04C-0081, which allegedly hit the cycle of Jagdish Singh. He also stated that in fact, he had helped Jagdish Singh in shifting him to the Civil Hospital. It has also come on record that on the next day of the accident, FIR was got lodged by

respondent No.5 against the driver of the said car for causing the accident. However, upon an application by the claimant – widow, the matter was investigated by Inspector Dharam Pal and a charge-sheet was filed against respondent No.5 in the Court of Ilaqa Magistrate.

Neither respondent No.5, the driver of the offending vehicle, nor respondent No.6, the owner preferred to lead any oral evidence in support of their plea that the accident was caused by the car stated above and not by the offending vehicle i.e. a motorcycle. Navjot Singh appeared before the Tribunal for evidence only when he was summoned by the Tribunal at the instance of the respondent -Insurance Company. In his evidence, he stated that one Maruti Zen car bearing a Delhi registration number hit the cyclist Jagdish Singh. He also stated that in the accident, he also suffered injuries, but flatly denied that the offending vehicle (motorcycle) even touched the deceased.

Copy of application dated 22.6.2011 (Ex.R1) moved by the widow of the deceased to the SSP Mohali was also proved on record by the appellant – Insurance Company, wherein, it was stated that the bicycle of the deceased was hit by the motorcycle of respondent No.5. As a result, Jagdish Singh fell in the middle of the road and it was witnessed by Lakhbir Singh and Rantej Singh, PW2 and PW3, respectively. When they were trying to control the traffic to help Jagdish Singh, in the meantime, driver of the car bearing No.DL-04C-0081 ran over Jagdish Singh.

In the light of the above evidence, it is crystal clear that the accident was caused by the offending vehicle, whereupon, Jagdish Singh fell in the middle of the road and suffered injuries. It was subsequently, that he

was run over by the Maruti car.

It was in the light of the above evidence that the Tribunal held it to be a case of composite negligence of both the vehicles. However, on the liability to pay the compensation, it held as under:-

*“Thus, I find that when two vehicles collide and drivers of each such vehicle contributes in causing the accident by their negligence and during the process, if injuries occur to a third person then on claim being brought by injured third party, as negligence in driving the vehicle stands already established, a claimant need not lead evidence to prove negligence of joint tort-feasors. Rather the law affords a choice to such an injured third party to sue either or both of the tort-feasors. In this regard, I further find support from the law laid down by our own Hon'ble High Court in **Oriental Insurance Company Ltd. vs. Monika Verma and others**, 2008(3) PLR 83.”*

No fault can be found with the finding of the Tribunal recorded on the issue of negligence and accordingly the liability to pay the compensation.

Coming to the assessment of compensation, in her evidence before the Tribunal, the widow of the deceased (PW1) stated that the deceased was working in Khanpur Resort at Kharar as a gardener and getting more than Rs.15,000/- per month. However, no documentary evidence was led to prove the same.

Ld. Counsel for the appellant – Insurer has argued that in such circumstances the Tribunal should have treated him as an unskilled labourer or at most a semi-skilled labourer and assessed his income as per the

Minimum Wages notified by the State. Mr. Swaich argued that being a gardener in a resort he would certainly come in the semi-skilled category.

As per the notification of the Punjab Government relied on by the Ld. Counsel Minimum Wages in Punjab w.e.f., September 1, 2011 to February 29, 2012 for semi-skilled (lower) were Rs.161.52 Rupees per day. His monthly income is assessed @ Rs.161.52 per day (161.52x30 = 4845.60 = 4846 rounded off).

Accordingly, in view of the above as also the decision of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680 the compensation is re-assessed as under:-

Sr.No.	Heads	Calculation (In Rs.)
(i)	Monthly Income	4846/-
(ii)	40% of above (i) to be added as future prospects (deceased aged 36 yrs.)	4846+(4846x40/100) = 6784.40/-
(iii)	Monthly dependency (1/4 th of (ii) deducted as personal expenses of the deceased - four dependants)	6784.40- (6784.40x1/4)= 5088.30
(iv)	Loss of dependency after multiplier of 15 is applied	50888.30x12x15= 9,15,894/-
(v)	Loss of Consortium (Exclusively payable to the widow of deceased)	40,000/-
(vi)	Loss of Estate	15,000/-
(vii)	Funeral Expenses	15,000/-
	Total	9,85,894/- (rounded off at Rs.9,90,000/-)

Hence, the appeal is allowed. The Award of the Tribunal is modified to the extent that the appellant is held entitled to compensation of Rs.9,90,000/-, that is, Rs.10,58,000/- (2048000-990000) less than the amount awarded by the Tribunal. Interest shall be paid on the compensation

at the rate of 7.5% per annum from the date of filing of claim application till
realisation.

July 13, 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No