

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

FAO No.2745 of 2018 (O&M)

Date of Decision: May 17, 2018

The National Insurance Company

---Appellant

Versus

Santosh Kumari and others

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.R.C. Gupta, Advocate for
the appellant-insurer.

HARINDER SINGH SIDHU, J.

The insurer has filed the present appeal challenging the award dated 11.1.2018 passed by the Motor Accident Claims Tribunal, Hoshiarpur (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 10.5.2016 in the area of Police Station Hariana a vehicular accident took place involving Car No.PB-08AL-0027 (herein for short 'the offending vehicle'), wherein, Rajinder Pal Singh lost his life. 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 mother, widow, and three children of Rajinder Pal Singh, the Tribunal assessed the income of the deceased at Rs.13,000/- per month, treating him as a skilled labour, awarded addition of 25% towards future prospects, deducted 1/4th towards his personal expenses, applied the multiplier of 15 (deceased aged about 41

Rs.70,000/- under conventional heads was also awarded relying upon National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680. In all, compensation of Rs.22,63,750/- along with interest was awarded.

Challenging the Award, Ld. Counsel for the appellant – Insurer has argued that without there being any documentary proof regarding the income of the deceased, his monthly income @ Rs.13,000/- has been assessed on higher side. He has argued that though the Tribunal treated the deceased as a skilled labour, but it erred in assessing his income at Rs.13,000/- per month, without any basis. It is submitted that the assessment of income ought to have been as per the minimum wages prevalent at the relevant time in the State.

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

It was pleaded in the claim petition that the deceased was a highly-skilled driver of heavy vehicles and working as Shovel Operation Driver in Abu Dhabi (UAE) with Bin Muleet Transport and Demolition EST Transport Company and was earning Rs.50,000/- per month. To prove the assignment of the deceased, the claimants proved on record Ex.A10 and Ex.A11, passports of the deceased, Ex.A12 his employment certificate, Ex.A13 and Ex.A16 Driving licence of United Arab of Emirates and Ex.A15 Resident Identity Card. Moreover, they also tendered in evidence Mark A-24 to mark A-30 the payment vouchers of salary in respect of the deceased issued by Bin Muleet Transport and Demolition EST Transport Company, Mark A-31 to Mark A-35 the receipt issued by UAE Exchange

Centre LLC – Mussafah. The prove the rate of exchange of currency, the claimants also produced 'Exchange Rate History' as Mark A-45. It was on the strength of the payment voucher of salary that the claimants pleaded that the deceased was earning 2500 Dirhams per month.

It is true that the voucher slips and other documents produced in evidence to establish the income of the deceased were not exhibited but were only marked. But the exhibited documents i.e. the passports of the deceased, his employment certificate, UAE driving licence and resident Identity Card (Ex.A10 to Ex.A16) have proved that the deceased was a qualified driver, employed as Shovel Operation Driver with Bin Muleet Transport and Demolition EST Transport Company. He came to India on 13.10.2015 and unfortunately, within seven months i.e. on 10.5.2016, he met with the accident in India and lost his life.

The Tribunal held that there is no evidence on the record to indicate that the employment of the deceased was protected by his employer and, therefore, it could not be inferred that at the time of his unfortunate death, he was in employment with the UAE Company. The finding of the Tribunal may be correct in the circumstances of the case, but at the same time, the Court has also to take into consideration that in a claim petition filed under the Motor Vehicles Act, it is the duty of the Court to award 'Just Compensation'.

The object of the Motor Vehicles Act is to award just compensation. In Ningamma and another vs. United India Insurance Company Limited, (2009) 13 SCC 710 , Hon'ble Supreme Court observed

as under:

“34. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not.”

The Hon'ble Supreme Court in **Raj Rani v. Oriental Insurance Co. Ltd., (2009) 13 SCC 654** observed that it is not necessary in a proceedings under the Motor Vehicles Act to go strictly by the pleading or evidence. It is the duty of the Court to award 'just compensation' irrespective of the fact that any such plea has been raised by the claimant or not :

“13. ... It is not necessary in a proceeding under the Motor Vehicles Act to go by any rules of pleadings or evidence. Section 168 of the Act speaks about grant of just compensation. The court's duty being to award just compensation, it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not.”

No doubt, in the present case, there was no evidence brought on record that the deceased was in continuous employment of the UAE Company, but the Court cannot ignore the evidence brought on record to prove that the deceased was qualified as 'Shovel Operation Driver' in UAE and had worked there. In these circumstances, the assessment of his income cannot be in terms merely of wages of a skilled labourer as per the minimum

wages Act. Due consideration had to be given to his qualification and job in the UAE. It can also not be denied that a driver qualified as 'Shovel Operation Driver' would even earn more than Rs.13,000/- per month in the year 2016 when the accident took place.

In view thereof, in my view, the assessment of monthly income @ Rs.13,000/- does not appear to be on the higher side.

No other point was raised.

Appeal dismissed.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any ground that may be available to them.

May 17, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No