

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

**FAO No.8008 of 2017 (O&M)
Date of decision: 16.02.2018**

The New India Assurance Company Ltd.

....Appellant

Versus

Surjit Kaur and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.S. Sidhu, Advocate,
for the appellant.

RITU BAHRI J. (Oral)

This appeal has been filed by New India Assurance Company Ltd.-appellant against the award dated 13.09.2017 passed by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.5,97,000/- has been awarded in favour of claimants-respondent Nos. 1 to 4 on account of death of Apar Singh in a motor vehicular accident which took place on 04.06.2015. Respondent No.1 is mother and respondent Nos.2 to 4 are brothers and sister of deceased Apar Singh.

Brief facts of the case are that on 04.06.2015, at about 11.00 P.M., Apar Singh (since deceased) was doing the lighting work at Gurdwara Sahib near TB Hospital, Patiala by scaling on the iron stairs. In the meantime, a scooter (Activa) bearing registration No. PB-11-BC-1927 being driven by Davinder Kumar-respondent No.5 (respondent No.1 in claim petition) in a rash and negligent manner, came from the side of Lahori Gate and struck against the iron stairs, as a result of which, Apar Singh fell down

on the road along with the iron stairs and received multiple serious and grievous injuries. He was taken to Rajindra Hospital, Patiala, where he succumbed to the injuries on 05.06.2015. With regard to the incident, FIR Ex.P1 was registered against Davinder Kumar-respondent No.5 (respondent No.1 in the claim petition). Consequently, the claimant-respondent Nos.1 to 4 filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by respondent No.1 (respondent No.5 herein), as a result of which Apar Singh has died and thus, returned the finding on issue no.1 in favour of the claimants. This finding was given on the basis of the deposition of Gurpreet Singh (PW-3), who was an eye witness of the accident. Further, the claimants have proved on record FIR Ex.P1 along with other documents.

In the absence of any documentary proof, notional income of the deceased was assessed as Rs.7000/- per month. Out of this, 50% amount was deducted towards personal expenses of the deceased. The deceased was 35 years of age at the time of accident/death. He was a bachelor. After applying the multiplier of 16, dependency of claimants came to Rs.6,72,000/- (3500/- x 12 x 16). In addition to it, Rs.1,00,000/- were awarded on account of love and affection and Rs.25,000/- as funeral expenses. Hence, the claimants were found entitled to total compensation of Rs.7,97,000/-. Since the claimants had already received a sum of Rs.2,00,000/- from the respondents, this amount was deducted from the total compensation. Ultimately, the claimants were awarded total compensation of Rs.5,97,000/- along with interest @ 7.5% per annum from the date of

filing of the petition till realization. Feeling dissatisfied with the impugned award, the appellant-insurance company has preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

Learned counsel for the Insurance Company (appellant) is challenging the finding given by Tribunal on issue No.1 and contended that even though, the FIR Ex.P1 was registered on the same day, but it was subsequently cancelled, as a compromise Ex.R2 was effected between the parties. As per the said compromise, Rs.2,00,000/- had been paid by the respondents to the claimants. Learned counsel further argued that after the compromise was effected between the parties, the insurance company (appellant) could not be held liable to make payment of compensation, as the allegation of negligence did not survive.

Heard.

This fact has been gone into by the Tribunal and a finding has been given that documents Ex.R1 and Ex.R2 substantiated the stand of claimants that the accident had taken place on account of negligent driving of the offending scooter by its driver, which led to the death of Apar Singh. Reference has been made to the judgment passed by Hon'ble the Supreme Court in **Bimla Devi & others vs. Himachal Road Transport Corporation and others**, Civil Appeal No.2538 of 2009 (arising out of SLP (C) No.280 of 2006) decided on 15.04.2009.

The cancellation report in itself cannot be made a ground to interfere in the finding given by Tribunal on issue No.1. Learned counsel

for the appellant has placed on record documents (Annexure A-6 and A-7) to show that the driver had been arrested and mechanical test report of the Honda Activa scooter had been obtained. Both these documents are dated 18.06.2015 and the accident had taken place on 04.06.2015. This goes to show that Davinder Kumar-respondent No.5 (respondent No.1 in claim petition) was driving the offending scooter and his vehicle had been impounded in time.

After going through the impugned award, this Court is of the view that the findings given by the Tribunal on all the issues do not require any interference. The compensation has been awarded after appreciating the evidence in the right perspective. In this view of the matter, argument raised by learned counsel for the appellant is rejected.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

16.02.2018
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No