

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

F.A.O. No. 6746 of 2018(O&M)

Date of Decision: 30.10.2018

United India Insurance Company Limited

.....Appellant.

Versus

Dalbir Kaur and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Gopal Mittal, Advocate
for the appellant.

LISA GILL, J (Oral).

This appeal has been filed by the appellant-Insurance Company against the impugned award dated 02.08.2018, passed by the learned Motor Accident Claims Tribunal (for short 'MACT'), Kapurthala.

As per averments in the claim petition, Gurcharan Singh along with Karnail Singh, Kuldeep Singh, Mahant Singh and other family members had gone to village Buttan to attend marriage function of their relative on 10.02.2015. After attending the marriage, Gurcharan Singh and Karnail Singh on one motorcycle alongwith Kuldeep Singh and Mahant on another motorcycle, started for their village Villa Kothi. It was further pleaded that Kuldeep Singh along with Mahant (pillion rider) was driving the vehicle in question on the left side of the road at a moderate speed and was just ahead of the motorcycle driven by Gurcharan Singh and Karnail Singh (Pillion rider). When they just crossed the Thum Petrol Pump of village Teham, a bus bearing registration no. PB-06-G-9888 driven by

respondent no.1-Kulwant Singh in a rash and negligent manner, approached. In the process of overtaking a car going ahead of it, driver of the bus lost control over the bus and brought the same on the wrong side of the road. Driver side of the bus hit against the motorcycle being driven by Kuldeep Singh. As a result thereof, Mahant (pillion rider) fell on the road, whereas Kuldeep Singh and the motorcycle which got stuck with the bus were dragged by the bus for about 15-20 yards. Kuldeep Singh died at the spot due to the injuries received by him and the motorcycle was badly damaged. Mahant suffered serious multiple injuries. FIR No. 23 dated 10.02.2015, was registered against respondent no.1-Kulwant Singh, in this respect.

Petition under Section 166 of the Motor Vehicle Act (for short 'the Act') was filed seeking compensation on account of the death of Kuldeep Singh.

Claim was resisted by the appellant-respondent no.3. Following issues were framed by the learned Tribunal:-

1. Whether Kuldeep Singh died in road accident due to rash and negligent driving of respondent no.1?OPA
2. Whether the claimants are entitled to get any compensation, if so, to what extent and from whom?OPA
3. Whether the respondent no.1 was not holding a legal and valid license at the time of alleged accident?OPR
4. Whether the claimants have got no cause of action to file the present petition?OPR.
5. Relief.

Learned Tribunal on consideration of the evidence on record, held that Kuldeep Singh died due to the injuries suffered by him in the accident caused by the rash and negligent driving of the offending bus by respondent no.-1-Kulwant Singh.

A sum of ₹15,54,856/- alongwith interest at the rate of 9% from

the date of filing of the petition till realization was awarded to the claimants.

It was concluded that the deceased was 21 years old at the time of the accident earning a sum of ₹10,000/- per month while considering him to be a daily wager. Deduction of 1/ 3rd was effected and multiplier of 18 was applied. Claimants were held entitled to ₹50,000 each i.e. ₹1 lakh on account of loss of love and affection and care and ₹15,000/- was awarded as funeral expenses.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that the learned tribunal has erred in assessing the income of the deceased to be ₹10,000/- per month. There is in-fact no evidence on record to show that the deceased-Kuldeep Singh was doing the work of a scooter/motorcycle mechanic after having taken a shop on rent. Therefore, once the learned tribunal observed that there was nothing on record to show that the deceased was skilled in the vocation in question, the deceased should have been considered to be a labourer and minimum wages available in the State of Punjab at the relevant time i.e. ₹6847/- p.m., should have been assessed as his income instead of ₹10,000/-. It is further submitted that the learned tribunal has erred in effecting the deduction of 1/ 3rd on account of personal expenses. As the deceased was a bachelor, deduction of 50% should have been deducted. It is further contended that the appellant is liable to be absolved of its liability as the driving license or the registration certificate of the offending vehicle was not placed on record. It is thus prayed that the present appeal be allowed and the insurance company be discharged of its liability to pay the compensation.

I have heard learned counsel for the appellant and have gone through the photocopy of the record produced in Court today.

There is no dispute that Kuldeep Singh died due to the injuries suffered by him in the motor vehicle accident which took place on 10.02.2015 due to the rash and negligent driving of the offending vehicle by respondent no.1-Kulwant Singh @ Kanta Singh. I have perused the testimony of PW-1-Gurcharan Singh, father of the deceased. It is specifically stated by PW-1 that his son aged 21 years had studied up to the 7th standard. He was running his shop at bus stand, Subhanpur and was earning a sum of ₹700-800/- per day. Deceased had two employees, aged about 14 years working with him. Argument raised by learned counsel for the appellant that PW-1-Gurcharan Singh stated that the deceased was not running the shop under any name and style necessarily implies that the deceased was not running any shop is incorrect. When the statement of PW-1 is read as a whole, it transpires that the shop was not being run under any particular name and style, but was nevertheless being run as such at the bus stand Subhanpur. The relevant part of the said cross-examination of PW-1, reads as under:-

“He was studied up to 7th Class. He did not pass any diploma from any school or college in respect of the scooter/mechanic work. The deceased was not running the shop under any name and style. However, he running the shop at Bus Adda, Subhanpur. He was earning about 700/800 per day. He was maintaining the account. I have not placed any copy of statement maintained by deceased on the judicial file. He was having two employees who were about about 13/14 years.”

In view of the facts and circumstances as above, there is no infirmity in assessment of the income of the deceased to be ₹10,000/- per month.

It is further noticed that in view of the judgments of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009** and **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhuru Ram and others, Civil Appeal no. 9581 of 2018, arising out of SLP (Civil) No. 3192 of 2018, decided on 18.09.2018**, no ground is made out for any reduction in the total amount of compensation awarded by the learned tribunal.

In respect to the plea that a valid driving license or permit of the offending vehicle were not placed on record, it is pertinent to note that the learned tribunal has specifically observed in para no.22 of the impugned award, that the issues framed in this regard i.e. issue no.3 and 4, were not pressed by learned counsel for the insurance company during the course of arguments. Therefore, the said plea cannot be raised by the appellant, at this stage.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 02.08.2018 passed by the learned MACT, Kapurthala, which calls for interference by this Court at the instance of the appellant. Needless to say, any observation made in this appeal would not have any effect on the appeal, if any, filed by the claimants.

Appeal is accordingly dismissed with no order as to costs.

30.10.2018
s.khan

[LISA GILL]
Judge

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