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

FAO-278-1991(O&M)
Date of decision:-17.9.2019

Pritam Singh

...Appellant

Versus

Jaswant Kaur and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Tushar Madaan, Advocate and
Mr.Raj Sumer Singh, Advocate
for the appellant.

Mr.Paul S. Saini, Advocate
for the insurance company – respondent No.7.

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**H.S. MADAAN, J.**

On account of death of Avtar Singh son of Budh Singh in a motor vehicular accident, which took place on 19.9.1989 at about 7:10 p.m. in the area of Shingar Cinema, Police Station Division No.6, Ludhiana, statedly on account of rash and negligent driving of truck bearing registration No.PUU-878 (hereinafter referred to as the offending vehicle) by respondent No.1 – Arjan Kumar, the legal heirs of Avtar Singh i.e. his widow – Jaswant Kaur, minor son - Tapinder Singh, daughter – Harleen Kaur, father – Budh Singh and mother Gurbachan Kaur had brought a claim petition under Section 110-A of the Motor Vehicles Act against respondents i.e. Arjan Kumar – driver, Pritam Singh – owner and National Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation.

On notice, all the three respondent had appeared and contested the claim petition. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the Motor Accidents Claims Tribunal, Ludhiana (hereinafter referred to as the Tribunal) while allowing the petition vide award dated 22.10.1990, awarded compensation of Rs.2,40,000/- to the claimants, payable by respondents No.1 to 3 jointly and severally. The amount was ordered to be shared amongst the claimants as follows:

| | | |
|---|---|---|
| Jaswant Kaur | - | Rs.60,000/- |
| Tapinder Singh – minor | - | Rs.70,000/- |
| Harleen Kaur – minor | - | Rs.70,000/- |
| Gurbachan Kaur | - | Rs.40,000/- |

The shares of the minors were ordered to be deposited with State Bank of Patiala at Samrala in fixed deposits for the period till they attain majority. However, it was observed that Smt.Jaswant Kaur may draw the interest earned on the amount of the shares of minors after moving an application to the Tribunal so as to meet day to day expenses of the minors. Interest at the rate of 12% per annum from the date of application till realization was also granted. The liability of respondent No.3 – insurance company was held to be limited up to Rs.1,50,000/-.

This award left the respondent No.2 – owner of the offending truck aggrieved and he has approached this Court by filing the present appeal.

Notice of the appeal was given to the respondents, and respondent No.7 – insurance company has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal in light of the evidence adduced by the parties and keeping in view the facts and circumstances of the case, came to the conclusion that respondent No.1 – Arjan Kumar had caused the accident in which Avtar Singh deceased had lost his life, by his rash and negligent driving of the offending vehicle. The Tribunal has kept in view the ocular evidence provided by PW4 Raghbir Singh Grewal and PW5 Nirmal Singh. Both of them had deposed as per the case of the claimants that accident in which Avtar Singh had expired had taken place due to rash and negligent driving of such truck by respondent No.1 – Arjan Kumar, who had hit the scooter of Avtar Singh going on correct side from the rear side, resultantly Avtar Singh had fallen down and received injuries. FIR had been got registered by Raghbir Singh Grewal in which truck number is mentioned. Arjan Kumar had been challaned after completion of investigation. As observed by the Tribunal Arjan Kumar did not seem to have moved any application to higher police officers that he had been falsely involved. Though Arjan Kumar had got his statement recorded as RW1 stating that he was driver on the truck in question but he had not caused the accident. But his such statement was not accepted by the Tribunal. It was also noticed that postmortem report of the deceased suggested that injuries had been received in a motor vehicular accident.

Therefore, the finding so recorded by the Tribunal is correct and does not call for any interference.

As regards the quantum of compensation, the Tribunal had taken age of deceased to be 30 years. As per the case of the claimants, the deceased was running hosiery business at Bijlipur and he had raised a loan of Rs.1,20,000/- from Punjab Financial Corporation for his business being run under the name and style of M/s Punjab Knitting Industries and the deceased was sole proprietor thereof. According to the claimants, the deceased was earning Rs.2,000/- per month from hosiery business and Rs.1,000/- per month from the avocation of agriculture and all the claimants were dependent upon him. The deceased had done Masters in Art. As per the jamabandi Ex.6, father of the deceased owned land. Considering the educational qualification of the deceased and the fact that he was running hosiery business, his monthly income was assessed to be Rs.1,600 – Rs.1,700/-. No addition towards future prospects was made. His contribution towards the family was taken to be Rs.15,000/- per annum. As such, compensation of Rs.2,40,000/- was awarded. The Tribunal took note of the fact that as per insurance policy Ex.R1, the liability of the insurance company was limited up to Rs.1,50,000/-, therefore though the liability of all the three respondents was found to be joint and several, respondent No.3 – insurance company was held to be liable up to 1,50,000/-. I do not find any fault with such finding recorded by the Tribunal.

Learned counsel for the insurance company has referred to various authorities in support of his contention that in terms of the contract entered into between the appellant – insured Pritam Singh and respondent – insurance company, the liability of insurance company was limited up to Rs.1,50,000/-. It was so under the old Act of 1939. Therefore, that contract was rightly enforced by the Tribunal. The first authority referred to by him was ***The Oriental Insurance Co. Ltd. Kaithal Versus Urmila Devi and others, 2013(24) RCR(Civil)547*** by a Single Bench of this Court wherein while dealing with a claim petition where the accident had taken taken place within period of four months from the date of composition of Motor Vehicles Act, 1988, the policy was issued under old Act of 1939, in terms of which liability of insurance company was restricted to only Rs.1,50,000/-, observing that since no additional premium was paid by owner on coming into force of Act, the liability of insurance company would be restricted only to liability as contracted under old Act i.e. to the extent of Rs.1,50,000/-. The amount in excess of liability as determined shall have to be borne only by the owner and driver jointly and severally.

Learned counsel for the insurance company has also referred to authorities i.e. ***Rajan Versus Sukumaran, 1997 ACJ 778, New India Assurance Co. Ltd. Versus Chameli Devi, 2010(67) RCR(Civil)471*** and ***The Oriental Insurance Company Limited, Bangalore Versus T.B. Chandraprabha and Another, 2000(8) KantLJ 381***.

Therefore, the Tribunal was justified in giving such directions. The Award is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The compensation awarded can certainly be not said to be on higher side. It is just and sufficient compensation. There is no ground to reduce the compensation so awarded or to withdraw the direction with regard to liability of the insurance company being limited up to Rs.1,50,000/-.

Thus, the appeal stands dismissed.

17.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**