

FAO-2582 of 2019 (O&M)

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

FAO No.2582 of 2019 (O&M)
Date of decision: 03.09.2019

United India Insurance Co., Ltd. Pathankot

.....Appellant

versus

Lovepreet Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Brig. B.S. Taunque (Retd.), Advocate, for the appellant.

RAMENDRA JAIN, J. (ORAL)

Insurance Company through this appeal has laid challenge to award dated 03.01.2019 of the Motor Accident Claims Tribunal, Gurdaspur (in short the 'Tribunal'), accepting claim petition of respondents No.1 to 4 under Section 166 of the Motor Vehicles Act, 1988 (in short the 'Act'), thereby awarding compensation of ₹32,20,000/- along with interest @ 7.5% per annum from the date of institution of claim petition.

Briefly, in the night of 15.09.2016 deceased Rattan Singh accompanied by Randhir Singh, driving truck No.PB-06-F-2435, loading wheat from FCI Godown, Gurdapur, was proceeding towards Kathua via Pathankot. Pardhan Singh, real brother of deceased Rattan Singh was following them, driving another truck bearing registration No.PB-29-C-9263. When both of them reached near Magralla bye-pass, tyre of truck driven by Rattan Singh got punctured. Therefore, to change the tyre, he parked his truck on the extreme left side of the road. Pardhan Singh with

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headlights on of his truck was helping deceased Rattan Singh in replacing the punctured tyre. In the meantime, offending truck bearing registration No.PB-06-K-2227 driven by respondent No.6 – Ramandeep Singh, owned by respondent No.5 – Sandeep Sharma and insured with the appellant, coming from behind in a rash and negligent manner, dashed in truck bearing registration No.PB-29-C-9263. As a result thereof, truck No.PB-29-C-9263 further dashed into truck No.PB-06-F-2435 driven by deceased Rattan Singh from behind. Consequently, Rattan Singh got sandwiched in between both the trucks, receiving multiple grievous injuries and succumbed to the same.

Being aggrieved of his death, widow of deceased Rattan Singh and his children approached the Tribunal, filing a claim petition under Section 166 of the Act for grant of compensation. Said claim petition was contested by appellant – Insurance Company, driver and owner of the aforesaid offending truck.

After holding trial, the Tribunal vide award impugned herein awarded compensation to respondent No.1 to 4 – claimants in the manner as narrated above.

Learned counsel for the appellant *inter alia* contends that monthly income of the deceased to the tune of ₹20,000/- taken into consideration by the Tribunal in the absence of any documentary or cogent evidence, is on higher side. The same ought not to have been considered more than ₹12,000/- per month. Relying upon the judgment in ***S. Manjula Devi and another v. Brijpal Singh and others***, I(2017) ACC 659, learned counsel contends that since as per stand of the respondents-claimant truck

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bearing registration No.PB-06-K-2227 being driven in a rash and negligent manner had dashed into truck bearing registration No.PB-06-F-2435, therefore, it was a case of equal contributory negligence of drivers of both the trucks, namely Pardhan Singh and respondent No.6 – Ramandeep Singh. Resultantly, the Tribunal ought to have held liability of the appellant-Insurance Company to the extent of 50% each.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant-Insurance Company, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

There is no rebuttal by the appellant – Insurance Company to the evidence of respondents-claimant that deceased Rattan Singh was a transporter having two trucks bearing registration Nos.PB-06-F-2435 and PB-29-C-9263.

From the ownership of deceased Rattan Singh over two trucks, it is apparent that he was a businessman/transporter and, thus, must be earning much more than the income considered by the Tribunal @ ₹20,000/- per month. No documentary proof much more than proving ownership over two trucks of deceased Rattan Singh was required to prove his alleged income taken into consideration by the learned Tribunal. Therefore, rejecting arguments of learned counsel for the appellant-Insurance Company, this Court is not inclined to interfere in the income so arrived at by the Tribunal @ ₹20,000/- per month.

As far as argument of learned counsel for the appellant-Insurance Company qua contributory negligence of both the trucks bearing registration numbers PB-06-F-2435 and PB-06-K-2227 is concerned, it is

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observed that truck bearing registration No.PB-06-F-2435 was in stationary condition on *katcha* portion of the road, when truck bearing registration No.PB-06-K-2227 dashed it, from behind. There is no *iota* of evidence that driver of truck bearing registration No.PB-06-F-2435 also contributed in causing the accident in question. Thus, finding of the learned Tribunal that accident in question had occurred due to sole negligence of truck bearing registration No.PB-06-K-2227 is not required to be disturbed. Accordingly it is upheld.

Facts and circumstances of the judgment relied upon by learned counsel for the appellant are completely distinguishable from the facts of the present case. Therefore, no benefit of the same can be given to the appellant.

Dismissed.

(Ramendra Jain)
Judge

September 03, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No