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

**FAO No.2602 of 2019(O&M)**

**Date of decision: 22.4.2019**

National Insurance Co. Ltd. …..Appellant

VERSUS

Bhupinder Kaur and others .....Respondents

*****

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

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

*****

**REKHA MITTAL, J. (Oral)**

The present appeal directs challenge against award dated 24.01.2019 passed by the Motor Accidents Claims Tribunal, Chandigarh (in short 'the Tribunal') whereby compensation has been assessed on account of death of Jagdish Chand in a motor vehicular accident that took place on 11.05.2018.

Counsel for the insurance company would inform that appeal has been preferred to assail findings of the Tribunal on issue No.1 as well as quantum of compensation assessed by the Tribunal.

With regard to findings of the Tribunal attributing rashness and negligence to driver of motorcycle bearing No.HR-03-V-8508 on which the deceased was travelling as a pillion rider, it is argued that no FIR was registered with regard to occurrence and DDR No.10 dated 12.05.2018 was lodged at the behest of driver of alleged offending vehicle wherein it was recorded that occurrence took place due to appearance of a cattle in

DIWAKER GULATI
2019.04.29 12:42
I attest to the accuracy and
authenticity of this document
Chandigarh

front of motorcycle driven by Ram Kumar. It is further argued that the claimants introduced Rajesh Kumar PW-3 to be an eye-witness to the occurrence in order to support their cause for claiming compensation though the name of said Rajesh Kumar neither finds mention in the DDR nor in the claim application.

To assail quantum of compensation, it is argued that the Tribunal has wrongly assessed income of the deceased at Rs.12,000/- per month for computing loss of dependency though the claimants have failed to produce satisfactory much less cogent evidence to prove income of the deceased. In addition, it is contended that even if the deceased was owner of harvest combine and using the same for harvesting the crops, the same would still be available with family of deceased.

Another submission made by counsel is that sons of the deceased (claimants No.2 and 3) are adult and gainfully employed, therefore, they cannot be held dependent upon income of the deceased and as such deduction for personal expenses allowed by the Tribunal needs modification in the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**.

I have heard counsel for the appellant, perused the paper-book particularly the award impugned.

Lodging of FIR is not a sine qua non for maintaining a claim before the Tribunal. The driver of motorcycle on which the deceased was a pillion rider lodged DDR that accident is the result of sudden appearance of a cattle in front of the motorcycle. Rajesh Kumar, an eye-witness to the occurrence was examined to discharge onus of issue No.1. Counsel for the

DIWAKER GULATI
2019.04.29 12:42
I attest to the accuracy and
authenticity of this document
Chandigarh

appellant has failed to point out any facts elicited in cross examination of Rajesh Kumar to create a dent in his testimony or doubt with regard to his presence at the spot. The driver of motorcycle had every reason to escape his civil and criminal liability, therefore, facts narrated in the DDR at the behest of Ram Kumar cannot be taken as a gospel truth. Ram Kumar did not appear in the witness box to counter testimony of Rajesh Kumar. This apart, in absence of examination of Ram Kumar, there is no evidence by the respondents including the insurance company that Ram Kumar could not avoid the accident despite taking reasonable care even if a stray cattle had appeared at the site. In the given circumstances, I do not find any reason to differ with findings of the Tribunal answering issue No.1 in favour of the claimants.

This brings the Court to quantum of compensation assessed by the Tribunal. Counsel for the appellant- insurance company has not disputed that the deceased was owner of harvest combine. The widow of the deceased appeared in the witness box and deposed that the said harvest combine was plied by the deceased and he used to earn Rs.4,50,000/- per annum. The deceased was stated to be a carpenter. Taking a clue from the notification issued by the State of Haryana fixing minimum wage at the relevant time coupled with evidence on record, there is no justifiable reason to intervene in extent of income of deceased assessed by the Tribunal.

The contention of insurance company with regard to deduction for personal expenses is not meritorious and liable to be rejected for the reason that even if widow of the deceased is held to be the sole dependent, admissible deduction for personal expenses would be $1/3^{rd}$. In

DIWAKER GULATI
2019.04.29 12:42
I attest to the accuracy and
authenticity of this document
Chandigarh

this context, reference can be made to judgment of this Court **Pawan Kumar and others Vs. Ramesh Kumar and others, 2016(1) Law Herald 758**.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

**APRIL 22, 2019** **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no

DIWAKER GULATI
2019.04.29 12:42
I attest to the accuracy and
authenticity of this document
Chandigarh