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

FAO-2123-2008(O&M)
Date of decision:-4.4.2019

M/s The New India Assurance Company Ltd.

...Appellant

Versus

Gurdarshan Kaur and others

...Respondents

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

Present: Mr.R.K. Bashamboo, Advocate
for the appellant.

None for the respondents.

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

On account of death of Jaswant Singh in a motor vehicular accident, which took place on 16.11.2005, his legal representatives, namely his wife – Smt.Gurdarshan Kaur, aged about 45 years, daughters Paramjeet Kaur and Hardeep Kaur aged about 25 years and 24 years, respectively, as well as son Baljeet Singh aged about 22 years, all residents of village Purana Shalla, Tehsil and District Gurdaspur had brought a claim petition under Section 163-A of the Motor Vehicles Act, 1988 against The New India Insurance Company, Jalandhar Road, Batala, District Gurdaspur, claiming compensation as per structured formula.

Briefly stated, facts of the case are that on 16.11.2005 Jaswant Singh deceased was driving his motorcycle Bajaj CT-100 followed by his brother Sukhdev Singh on Vicky Kinetic; that they were returning home from village Chak Shareef; that when the deceased driving his motorcycle reached near village Thakarpur, then the road was damaged; as a result of bad holes on the road, the motorcycle got stuck and due to loss of balance fell down; that Jaswant Singh also fell on the ground and suffered multiple grievous injuries; that he was taken to Civil Hospital, Tibri Cantt. from where he was referred to Military Hospital, Pathankot in view of his serious condition; that he was admitted there for treatment but succumbed to the injuries on 21.11.2005, which he had suffered in the road side accident; that post mortem examination on the dead body of deceased was performed at Civil Hospital, Gurdaspur on 21.11.2005 itself; that the matter with regard to happening of the accident was reported to the police at Police Station Purana Shalla; that proceedings under Section 174 Cr.P.C. were initiated.

Notice of the claim petition was given to the respondent – insurance company, which put in appearance through counsel raising preliminary objections that petition was not maintainable since the alleged accident was not covered under the Motor Vehicles Act, rather was a personal accident. Refuting the material assertions, such respondent prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether on 16.11.2005 Jaswant Singh had died in road side accident while driving motorcycle Bajaj CT-100? OPP.
2. Whether the claimants are the legal representatives and were dependent upon the deceased? OPP.
3. Whether claimants are entitled to compensation? If so how much and from which of the respondent? OPP.
4. Whether the petition is not maintainable in the present form? OPR.
5. Relief.

Both the parties led evidence in support of their respective claims.

In support of their case, the claimant No.1 Gurdarshan Kaur got her statement recorded as AW1 and the claimants further examined Sh.Sukhdev Singh as AW2.

On the other hand, respondent tendered in evidence Insurance policy as Ex.R1.

After hearing arguments, the Tribunal decided issues No.1 and 2 in favour of the claimants and against the respondent, issue No.3 in favour of the claimants and against the respondent, issue No.4 against the respondent and in favour of the claimants. Resultantly while allowing the petition partly vide award dated 27.3.2008, the Tribunal granted compensation of Rs.2,88,000/- to the claimants with interest @ 6% per annum from the date of claim petition till realization.

Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

Notice of the appeal was issued to the respondents. Initially, respondents No.1 to 4 have appeared through counsel but subsequently there was no representation on their behalf.

I have heard learned counsel for the appellant besides going through the record and I find that the appeal is without any merit.

An important thing to be seen in this case is that the claim petition had been filed under Section 163-A of the Motor Vehicles Act, which is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there.

In the instant case as per version of the claimants and as is established on the record, the deceased had died while riding his motorcycle Bajaj CT-100, which was duly insured with respondent – insurance company. The contention of learned counsel for the appellant that deceased was not owner of the vehicle and cannot be said to be third party, therefore legal representatives of deceased are not entitled to compensation under scope of the policy is devoid of any merit. As admitted by learned counsel for the appellant during the course of arguments, it was a package policy and additional premium for owner/driver had been paid. It being so, the insurance company was rightly held liable to pay compensation to the claimants, who are legal representatives of the deceased.

Learned counsel for the appellant has further submitted that the deceased was not holding a valid driving licence at the time of accident and it was so observed by the Tribunal even, therefore, the claim petition should have been rejected. However, I do not find this argument to be worthy of acceptance. Keeping in view the nature of the proceedings the claim petition was rightly allowed by the Tribunal and there was no reason to absolve the insurance company of its liability to pay compensation.

Another argument advanced by learned counsel for the appellant was that as per version of the claimants, the deceased was engaged in avocation of dairy farming and was earning Rs.10,000/- per month and they had led evidence in that regard, however, the Tribunal had returned the finding that there was no convincing evidence in that regard. The deceased had died at the age of 50 years and his income was assessed to be Rs.3,000/- per month, annual income Rs.36,000/-, making 1/3rd deduction towards personal expenses, the annual dependency of claimants was found to be Rs.24,000/- and keeping in view the age of deceased multiplier of 12 was used, working out compensation amount to be Rs.2,88,000/-. The claimants were not granted any funeral expenses of Rs.2,000/-, loss of consortium to widow of deceased to be tune of Rs.5,000/- and loss of estate to claimants of Rs.2,500/- but since the claimants have not filed any cross appeal or cross-objections, I do not find it proper to grant such benefits to them.

The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

Finding no merit in the appeal, the same stands dismissed accordingly.

4.4.2019 **(H.S.MADAAN)**
Brij **JUDGE**

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

**Whether reportable : Yes/No**