

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

FAO No. 4426 of 2019 (O&M)

Date of decision : August 22, 2019

Oriental Insurance Company Ltd.

.....Appellant

Versus

Malkiat Kaur alias Malkiyat Kaur and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ashwani Talwar, Advocate and
Mr. Akash Sridhar, Advocate
for the appellant.

LISA GILL, J.

Present appeal has been filed by Oriental Insurance Company Ltd. challenging award dated 21.12.2008 passed by the learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal').

Brief facts necessary for adjudication of the case are that the claimants/respondents No. 1 to 4 filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Jagtar Singh on 11.12.2016 in a motor vehicle accident caused due to driving of the offending vehicle, i.e. Bus bearing registration No. CH01-G1-7554 by respondent No. 5 in a rash and negligent manner. It is pleaded that Jagtar Singh was crossing the road leading from Tribune Chowk to Hallomajra from the side of Industrial Area, Phase-1 towards PRTC workshop. When he reached near the divider of the road, offending vehicle Chandigarh Transport Undertaking (CTU) Bus bearing registration No. CH01-G1-7554 came at fast speed from the side of Tribune chowk and being driven in a rash and negligent manner, struck against the deceased. As a result thereof, he received serious injuries and succumbed to them.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 11.12.2016 due to rash and negligent driving of the offending vehicle, i.e. Bus bearing registration No. CH01-G1-7554, by respondent No. 5. The deceased aged 42 years is stated to be working as a Constable with the Chandigarh Police at the time of his death besides earning pension of ₹ 20,000/- per month, having retired as a Hawaldar after serving the Indian Army. Learned Tribunal awarded a sum of ₹77,77,322/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹51,004/- per month i.e. ₹6,12,048/- per annum and after deducting income tax income of the deceased was assessed as ₹5,64,639/- per annum. 30% increment was afforded on account of future prospects. Deduction of 1/4th was effected, keeping in view the number of dependants. Multiplier of 14 was applied. Additionally, a sum of ₹40,000/- on account of loss of consortium was awarded besides a sum of ₹15,000/- each on account of loss of estate and funeral expenses.

Learned counsel for the appellant – insurance company has vehemently argued that the vehicle in question has been falsely involved in this matter only with a view to extract compensation. The deceased was a Constable with the Chandigarh police. The propounder of the FIR Narinder Kumar, who deposed as PW3, has turned hostile in the criminal proceedings arising out of FIR (Ex.P5). The driver of the alleged offending vehicle has been acquitted in the said proceedings, therefore, it is clear that Narinder Kumar PW3 has made a false statement before the learned Tribunal. In this view of the matter, the insurance company is not liable to pay compensation

as it is not proved on record that the bus in question was involved in the accident. The respondent – driver has duly testified before the learned Tribunal as RW1 and he has denied the occurrence of the accident. It is further contended that in case, the bus in question is found to be involved in the accident in question, income of the deceased has been wrongly assessed as ₹51,004/- per month. It is submitted that future prospects at the rate of 25% instead of 30% should have been afforded. It is, thus, prayed that this appeal be allowed.

I have heard learned counsel for the appellant and have gone through the available file.

It is a matter of record that FIR (Ex.P5) was registered on the statement of Narinder Kumar, who stated that Constable Jagtar Singh was crossing the road leading from Tribune Chowk to Hallomajra, U.T., Chandigarh from the side of Industrial Area, Phase-1 towards PRTC workshop. When he crossed almost the entire lane and reached near the divider of the road, offending vehicle Chandigarh Transport Undertaking (CTU) Bus bearing registration No. CH01-G1-7554 being driven in a rash and negligent manner at fast speed came from the side of Tribune chowk and struck against the deceased. As a result thereof, Jagtar Singh fell on the road and received serious injuries. Narinder Kumar while testifying as PW3 before the learned Tribunal has categorically stated about the occurrence of the accident due to rash and negligent driving of the offending bus. Registration number of the CTU bus has been duly mentioned in the FIR as well as by PW3 before the learned Tribunal. It is relevant to note that the identity of the offending bus is duly proved on the record of this case. Merely because the driver of the offending bus has been acquitted in the

version, is not a ground to hold that the CTU bus was not involved in this accident. This is so for the reason that the identity of the offending vehicle is duly established on record. RW1 Sat Narain, the driver of the offending bus though stating that no accident took place with his bus, has categorically admitted that the said bus was taken in custody by the police from the spot of the accident itself and it was thereafter released on superdari. RW1 has further admitted that he used to ply the bus on the route where the accident had taken place. Narinder Kumar may have turned hostile in the criminal proceedings but in the wake of the positive evidence on record in the present proceedings where the claimant has to prove his case on the touchstone of preponderance of probabilities and not beyond reasonable doubt, it cannot be concluded that the offending bus was not involved in the accident. Acquittal of the accused driver in the criminal proceedings by itself is not a ground to non-suit the claimants in the given factual matrix. Finding of the learned Tribunal on this issue is, therefore, upheld.

Similarly, I do not find any merit in the argument raised by learned counsel for the appellant to the extent that increment of 25% and not 30% should be afforded towards future prospects. The deceased Jagtar Singh was admittedly serving as a Constable with the Chandigarh police. He had earlier served the Indian Army as a Hawaldar. In terms of judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, it is an increment of 30% which has to be afforded.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any

illegality, infirmity and perversity in the impugned award dated 21.12.2008 passed by the learned Motor Accident Claims Tribunal, Chandigarh.

There is a delay of 52 days in filing of FAO No. 4426 of 2019. Keeping in view the fact that the appeal is decided on merits, the question of delay in filing of this appeal is rendered academic. Application is, accordingly, disposed of.

Appeal is, accordingly, dismissed with no order as to costs.

(Lisa Gill)
Judge

August 22, 2019
rts

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