

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

FAO-2291-2009(O&M)

Date of decision:-4.4.2019

New India Assurance Co. Ltd.

...Appellant

Versus

Darshan Singh and others

...Respondents

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

Present: Mr.Paul S. Saini, Advocate
for the appellant.

None for respondents.

H.S. MADAAN, J.

S/Sh.Darshan Singh, aged about 32 years, Baldev Singh, aged 26 years, Ramandeep Singh, aged about 24 years and Harchand Singh, aged about 22 years sons of Sh.Amarjit Singh, who lost his life in a motor vehicular accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Gurdial Singh – driver, Bishesh Kumar – owner and New India Assurance Company Ltd. - insurer of truck-tipper having registration No.PB-12-J-1225(hereinafter referred to as the offending vehicle) claiming compensation.

As per the case of the petitioners/claimants, on 30.3.2008, the deceased Sh.Amarjit Singh along with Sh.Gurpreet Singh and Sh.Pritam Singh alias Kaka was going to Kurali on a motorcycle make Hero Honda Passion bearing registration No.PB-27-B-4629 being driven by

Sh.Amarjit Singh on correct side of the road at a normal speed and when they reached in the area of Punjab National Bank, Ropar Road, Kurali and time was about 9:00 a.m., then the offending vehicle loaded with Tarcoal crusher driven by respondent No.1 – Gurdial Singh in a rash and negligent manner, came from Ropar side without blowing any horn and struck against the motorcycle being driven by Amarjit Singh, resultantly, the riders fell down; that Amarjit Singh and Pritam Singh were crushed under the tyres of the offending vehicle, whereas Gurpreet Singh also received multiple injuries; that Amarjit Singh and Pritam Singh had died at the spot; that formal FIR regarding the accident was got registered; that post-mortem examination on the dead bodies of the deceased was got conducted. According to the claimants, the deceased Amarjit was working as Class IV employee at Civil Hospital, Kharar and was getting Rs.15,000/- per month as salary.

Notice of the claim petition was given to the respondents, who put in appearance. Respondents No.1 and 2 had filed a joint written statement, whereas respondent No.3 came up with a separate written statement. In the joint written statement filed on behalf of respondents No.1 and 2, they refuted all the material assertions in the claim petition denying that any accident had taken place involving the offending vehicle in question belonging to respondent No.2 – Bishesh Kumar, Contractor and driven by respondent No.1 – Gurdial Singh.

In the written statement filed by respondent No.3 – insurance company, it had raised various legal objections to wit challenging the maintainability of the claim petition, dubbing such petition to be bad for

misjoinder and non-joinder of necessary parties, further pleading that respondent No.1 was not holding a valid and effective driving licence at the time of accident and claimants had no locus standi to bring the petition; that the petition has filed by the claimants in collusion with the driver and owner of the offending vehicle; that the offending vehicle was not having a valid route permit and fitness certificate at the time of accident. On merits, the assertions in the claim petition were denied.

All the respondents prayed for dismissal of the claim petition.

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

1. Whether the death of Amarjit Singh son of Jawala Singh has been caused in a motor vehicular accident that occurred on 30.3.2008 at about 9:00 A.M. in the area of Punjab National Bank, Ropar Road, Kurali due to the rash and negligent driving of Truck tipper No.PB-12-J-1225 by its driver i.e. respondent No.1? OPP.
2. Whether the claimants are the legal heirs of Amarjit Singh son of Jawala Singh deceased? OPP.
3. Whether the claimants are entitled to receive the compensation on account of the death of Amarjit Singh son of Jawala Singh? If so, to what extent and from whom? OPP.
4. Whether the driver of Truck-tipper No.PB-12-J-1225 i.e. respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident? OPR3.
5. Whether the owner of the offending vehicle i.e. Truck-tipper No.PB-12-J-1225 was not holding a valid route permit and fitness

certificate at the time of alleged accident? OPR3.

6. Whether the claim petition is bad for mis-joinder and non-joinder of necessary parties? OPR3

7. Whether the claim petition is not maintainable in the present form? OPR.

8. Relief.

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

In support of their case, the claimants had examined PW1 Charanjit Singh, Clerk, Civil Hospital, Kharar, PW2 Mohan Singh, whereas claimant No.1 Darshan Singh stepped into the witness box as PW3.

On the other hand, respondents No.1 and 2 had tendered into evidence photocopy of insurance policy Ex.R1, photocopy of driving licence of Gurdial Singh Ex.R2, photocopy of RC of offending vehicle Ex.R3 and copy of route permit Ex.R4. Respondent No.3 – insurance company tendered into evidence insurance policy as Ex.R5.

After hearing arguments, the Tribunal decided issues No.1 to 3 in favour of claimants and against the respondents, issue No.4 in favour of the claimants and against respondent No.3, issue No.5 against the respondent No.3, issue No.6 against respondent No.3, issue No.7 against the respondents. Resultantly while allowing the petition partly vide award dated 8.1.2009, the Tribunal granted compensation of Rs.11,50,400/- to the claimants payable all the respondents jointly and severally with interest @ 6% per annum, if the amount of compensation was

deposited/paid within a period of two months from the date of award, failing which to pay interest @ 9% per annum.

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.

A perusal of the award goes to show that the Tribunal had taken the age of deceased to be 54 years as reflected in the post-mortem report Ex.P1 and considering the gross salary paid to the deceased, in view of the salary certificate Ex.P1/A proved on record, to the tune of Rs.13,215/-, deduction of 1/3rd was made towards personal necessities and expenses and thereafter monthly dependency of claimants was worked out to Rs.8,700, annual dependency Rs.1,04,400 (8700 x 12), and multiplier of 11 was used, working out the compensation to be Rs.11,48,400, adding a sum of Rs.2,000/- towards funeral expenses, total compensation was worked out to Rs.11,50,400/- and all the three respondents were held to be jointly and severally liable to pay the said amount.

I find that there is no illegality or infirmity in the award. With regard to the submissions made by learned counsel for the appellant, first of which being since the claimants happened to be major sons of the deceased, who were not dependent upon his earnings, therefore, they

could not file the claim petition and are not entitled to get any compensation. Whereas, I find little force in this contention. A father who is earning and even after retirement does provide financial support to his children in the form of giving financial assistance from time to time and it cannot be said that since sons of the deceased had attained majority, as such, they were not entitled to get any compensation on account of death of their father in the motor vehicular accident.

The second contention put forward by learned counsel for the appellant was that deduction of 50% should be made towards personal expenses. However, I am not in agreement with learned counsel for the appellant on that point and find that the Tribunal has rightly made deduction of 1/3rd amount towards personal expenses of deceased.

Another submission made on behalf of learned counsel for the appellant was that the age of deceased was taken to be 54 years by the Tribunal and multiplier of 11 was applied; that the age of retirement in State Government service is 58 years, therefore a split multiplier should have been used. Again, I am not convinced by this contention. It has to be taken note of that though age of deceased has been taken to be 54 years but then multiplier to be used as per settled law is '11' if the person was in age group of 52 to 55 years. The State Government has got policy of giving extension in service to its employees and even after retirement one could find some employment in private sector or some Government organization or get engaged in some avocation easily earning an amount of Rs.13,000/- to Rs.15,000/- per month. Therefore, there was no requirement of using split multiplier.

It has to be taken note of that the Tribunal has not added any amount towards future prospects and the amount awarded under conventional heads is also on the lower side 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
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No