

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

**F.A.O. No.2670 of 2011 (O&M) &
XOBJC-61-CII of 2012**

Date of Decision: 30.05.2019

Oriental Insurance Company Limited

..... Appellant.

Versus

Harish Bhatia and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Akash Sridhar, Advocate
for the appellant-Insurance Company.

Mr. Sumit Kalyan, Advocate
for Mr. Bhanu Pratap Singh, Advocate
for respondents no.1 and 2.

Mr. Arun Bansal, Advocate
for respondents no.3 and 4/cross-objectors.

LISA GILL, J.

This judgement shall dispose of FAO No.2670 of 2011 and
XOBJC-61-CII of 2012.

Appellant-Insurance Company, has filed this appeal challenging
award dated 06.01.2011, passed by the learned Motor Accident Claims
Tribunal, Hoshiarpur (for short 'tribunal').

Cross-objections have been filed by respondents no.1 and 2 i.e.,
the owner and driver of the offending truck bearing registration no. PB-06-
2572.

Brief facts necessary for the adjudication of the case are that a petition under Section 166 of the Motor Vehicles Act (for short 'Act') was filed by the claimants i.e., widow (since deceased), son and mother of Sucha Singh. It is claimed that Sucha Singh, who was working as an officer with the Punjab National Bank, Adda Mathola, Bharath, District Gurdaspur, was proceeding from his village Darapur to the place of his posting at Adda Mathola, Bharath, on Tanda-Sri Hargobindgarh Road, on 02.04.2006. The deceased was proceeding on a TVS Motorcycle bearing registration no. PB-54-9454 on the correct side of the road, at a normal speed. When, he reached in the area of village Marhi Panwan, at a distance of about 1 km from Gurudwara Manjh Sahib, the offending truck being driven in a rash and negligent manner, without blowing its horn, came from behind. The truck driver struck the truck against the motorcycle of Sucha Singh from behind. As a result thereof, Sucha Singh received fatal injuries. Son of the deceased accompanied by his mother-Bimla Devi reached the spot at about 10.00.a.m. They had gone to Dera Beas and after attending the Satsang, they were going to their village Darapur on a scooter. They saw Sucha Singh lying on the road side along with the motorcycle. A vehicle of Sant Baba Rangi Ram Ji Charitable Hospital (Regd.), VPO Jaja, Tanda, came to the spot. Sucha Singh was taken to the said hospital, but he succumbed to his injuries. FIR No. 42 dated 02.04.2006, under Section 304-A IPC, Police Station Sri Hargobindpur was registered on the statement of Harish Bhatia, son of the deceased against an unknown vehicle and an unknown driver.

AW-3-Gurmej Singh, Ex-sarpanch of village Vithwa, District Gurdaspur, suffered a statement before the police authorities on 15.06.2006

to the effect that he had gone to District Hoshiarpur to meet some of his relatives. He was standing at Tanda bye-pass in the morning on 02.04.2006 while waiting for some vehicle. In the meantime, a truck came from Jalandhar side and on his request, the truck driver gave him lift. The truck driver disclosed his identity as Jagdish Lal son of Dass Ram, resident of village Bawa Dass Pandori. When they were coming towards Sri Hargobindpur, a motorcyclist was struck against, by the truck which was being driven in a rash and negligent manner. Gurmej Singh, stated that he asked the truck driver to stop the vehicle, but the truck driver did not do so and chose to flee from the spot. Gurmej Singh got down from the truck at village Mathola, went to his village and thereafter proceeded to Uttar Pradesh to meet some of his relatives. When, Gurmej Singh returned from Uttar Pradesh, he disclosed the entire occurrence to the police.

The claimants pleaded that the deceased was getting a monthly salary of approximately Rs.25,000/- per month. He was born on 01.02.1957 and was contributing a major portion of his salary towards the claimants. Compensation was thus prayed for.

Respondents no.1 and 2 (respondents no.1 and 2 in the present appeal as well) resisted the claim petition. The owner and driver of the offending truck denied the averments and claimed false involvement of the truck. It is stated that the son of the owner of the truck had a brick-kiln at village Harchowal Bharn, in District Gurdaspur and the truck in question was being plied between Harchowal and Tanda. Claimants were stated to be in collusion with Gurmej Singh. It was denied that Gurmej Singh was ever given a lift by the driver of the truck in question.

Respondent-Insurance Company (appellant in the present appeal) also resisted the petition. Dismissal of the petition was prayed for.

From the pleadings of the parties, the following issues were framed by the learned tribunal:-

1. Whether Sucha Singh son of Ram Singh died in a motor vehicular accident, which took place on 02.04.2006, at about 10.00.a.m., on Tanda Sri Hargobindpur Road, as a result of rash and negligent driving of truck bearing no. PB-06-2572 by respondent no.1?OPA.
2. Whether the claim petition is bad for non joinder of necessary parties?OPR
3. Whether the driver of offending truck was not holding a valid driving license at the time of accident?OPR
4. Whether the claim petition has been filed in collusion with the respondents no.1 and 2?OPR
5. Whether the claimants are entitled to compensation, if so to what amount and from whom?OPA
6. Relief.

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

Learned tribunal on considering the evidence on record concluded that the accident in question took place due to rash and negligent driving of the offending vehicle and Sucha Singh lost his life in the said accident. The truck was duly insured with the appellant-Insurance Company and its driver was found to be having a valid driving license at the relevant time. Liability of the Insurance Company, owner and driver of the truck was held to be joint and several.

While accepting the deceased to be 49 years old, working as a Junior Manager, Grade-I in Punjab National Bank at Adda Mathola, learned tribunal assessed his income as ₹22,822.54/- per month. An addition of 30% for future prospects and a multiplier of 13 was applied. Claimants were entitled to compensation of ₹30,95,680/-, which is detailed as hereunder:-

1.	Income	₹22,822.54/-
2.	Addition towards future prospects	30%
2.	Deduction	1/ 3 rd
3.	Multiplier	13
4.	Loss of estate	₹5000/-
5.	Funeral expenses and last rites of the deceased.	₹5000/-
	Total	₹30,95,680/-

Aggrieved therefrom, present appeal and the cross-objections have been filed.

Learned counsel for the appellant-Insurance Company vehemently argues that the present is a case of hit and run. There is clear cut collusion between the claimants and Gurmej Singh and the truck in question has been falsely involved in the present case. No such accident as pleaded ever took place due to the rash and negligent driving of the said truck by its driver-respondent-Jagdish Lal.

Learned counsel for the appellant-Insurance Company further submits that there is no explanation whatsoever as to why Gurmej Singh did not come forward for recording his statement for such a long period. There is nothing on record to show that Gurmej Singh had proceeded to Uttar Pradesh. It is further argued that in case, this Court does not find favour in the abovesaid arguments, the quantum of compensation in any case, is excessive. Component of income tax has not been deducted. Furthermore, it is an increment of 25% and not 30% towards future prospects, which should be awarded while assessing dependency, to the claimants. It is further argued that appellant-Harish Bhatia (respondent no.1 in this appeal), being a major, holding a professional BAMS degree, is not entitled to any compensation.

Learned counsel for cross-objectors-respondents no.3 and 4, have argued on similar lines, though it is submitted that the vehicle in question is duly insured with the Insurance Company. Therefore, in any case, the cross-objectors are not liable to deposit the compensation in question.

Learned counsel for the claimants (respondents no.1 and 2 in this appeal) refutes the arguments as above. It is submitted that there is no evidence on record to indicate any kind of collusion between the claimants and Gurmej Singh. There is nothing on record to indicate as to why and how the offending truck was wrongly involved in the accident by the claimants. It is further submitted that there is no ground whatsoever for any reduction of the compensation as awarded. It is thus prayed that both the appeal as well as cross-objections, be dismissed.

I have heard learned counsel for the parties and have gone through the record with their assistance.

It is not in dispute that Sucha Singh was involved in a motor vehicle accident which took place on 02.04.2006 and he lost his life due to the injuries received in this accident. Postmortem report, Ex.A-1, is on record. The question for adjudication is whether it is the truck bearing registration no. PB-06-2572, which is responsible for the accident due to rash and negligent driving by its driver.

Learned counsel is unable to deny that FIR No. 42 dated 02.04.2006, under Section 304-A IPC, was immediately registered on the same day by the son of the deceased. It is truthfully recorded therein that Sucha Singh was hit by an unknown vehicle. Name of the driver is

obviously not mentioned either. It is a matter of record that it is on 15.07.2006 that AW-3-Gurmej Singh, Ex-Sarpanch of village Vithwa, District Gurdaspur, suffered his statement before the police and gave the details of the offending truck as well as the driver.

I have perused the affidavit, Ex.AW3/A, executed by AW-3-Gurmej Singh as well his cross-examination. It is clearly explained by AW-3 that he had taken a lift in the offending truck on 20.04.2006. He was a witness to the accident in which Sucha Singh lost his life. Merely because AW-3-Gurmej Singh stated that he knew the deceased as an employee of the Bank, does not in any manner indicate collusion between the claimants and Gurmej Singh. There is no reason whatsoever on record to prove false involvement of the truck or its driver, by Gurmej Singh.

At this juncture, it is useful to refer to the statement of the driver of the offending truck i.e., RW-1-Jagdish Lal. As per his affidavit, Ex.RW1/A, Jagdish Lal stated that the truck in question was being plied for carriage of bricks from brick-kiln being run by the son of the owner of the truck. RW-1 stated that he used to ply the truck generally on the Tanda-Hargobindpur road and was still being plied on the said road. He denied having given any lift to Gurmej Singh. It is further denied that the truck was ever involved in any accident in which Sucha Singh lost his life. RW-1 claimed that the truck in question was falsely implicated and FIR against him was wrongly recorded. RW-1, however admitted in his cross-examination that he was facing the trial emanating from FIR No. 42 dated 02.04.2006. Admittedly, RW-1, did not file any representation and neither objected to his alleged false implication in the accident in question.

AW-3-Gurmej Singh was subjected to lengthy cross-examination, but his testimony comes across as trustworthy and is free from any taint.

Learned counsel for the appellant-Insurance Company is unable to point out any evidence on record to indicate collusion between the claimants with any of the respondents. Learned tribunal, in the given facts and circumstances of the case have succeeded in proving that the offending vehicle was involved in causing the accident in question in which Sucha Singh lost his life. It is a settled position that in proceedings like the present, the claimants are to prove their case on the touchstone of preponderance of probabilities. Proof beyond reasonable doubt is not to be insisted upon. In this respect, reference can be made to the decision of the Hon'ble Supreme Court in case **Mangla Ram v. Oriental Insurance Company Ltd. and others, 2018(5) SCC 656**. Finding of the learned tribunal on issue no.1, is thus upheld.

There is no merit in the argument raised by learned counsel for the appellant-Insurance Company that the son of the deceased is not entitled to any compensation. It has been held in **Smt. Gurdev Kaur and others versus Jharmal Singh and another 2017 (3) PLR 8** that even where a son is major and is earning, he does not stop looking to his father for financial help.

In respect to the quantum of compensation, it is a matter of record that income of the deceased was assessed as ₹22,822.54/- on the basis of the last drawn salary of the deceased for the month of March 2006. AW-5-Amarjit Singh, Manager, Punjab National Bank, Adda Mathola, District

Gurdaspur, proved that Sucha Singh was working in the said bank and his date of birth was 01.02.1957. His last drawn salary for the month of March 2006 and certificate duly signed by him, EX.A-3, were duly proved by him. AW-5 has specifically stated that income tax of the employees is deducted at source. Therefore, there is no merit in the argument raised by learned counsel for the appellant-Insurance Company that component of income tax has not been deducted. Similarly, there is no merit in the argument raised by learned counsel for the appellant-Insurance Company that it is an increment of 25% which has to be awarded and not 30% in terms of the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680**. The deceased admittedly had a permanent job thus increment of 30% has to be afforded. Deduction of 1/3rd and multiplier of 13 has been correctly applied by the learned tribunal.

Therefore, there being no infirmity, illegality or perversity as urged by learned counsel for the Insurance Company, I do not find any ground to interfere in the impugned award dated 06.01.2011, passed by the learned tribunal, Hoshiarpur.

No other point has been raised.

Accordingly, FAO No. 2670 of 2011 as well as XOBJC-61-CII of 2012, are dismissed.

30.05.2019

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.