

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

FAO No. 1335 of 2014 (O&M)

Date of decision : September 18, 2019

National Insurance Company Ltd.

.....Appellant

Versus

Anita Rani and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Vandana Malhotra, Advocate
for the appellant.

Mr. Naveen Batra, Advocate and
Ms. Rajni Maurya, Advocate
for respondents No. 1 to 4.

None for respondents No. 5 and 6.

LISA GILL, J.

Present appeal has been filed by National Insurance Company Ltd. challenging award dated 25.11.2013 passed by the learned Motor Accident Claims Tribunal, Hoshiarpur (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 Balbir Singh in a motor vehicle accident which took place on intervening night of 24/25.05.2011 at about 8.00 a.m. It is pleaded that the deceased after completing his work at his Dhaba on Jalandhar-Pathankot road was going on his scooter bearing registration No. PB-58-1307. When he reached near his house in the area of village Mansar, near Railway bridge, he struck against the truck tralla bearing registration No. PB-08-AX-7938 wrongly parked on the middle of the road without any indicators or reflectors. As a result thereof, he suffered serious multiple injuries and succumbed to

them. The deceased aged 42 years is pleaded to be running a dhaba on Jalandhar – Pathankot road.

Learned Tribunal awarded a sum of ₹6,86,520/- with interest at the rate of 6% 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 ₹4,000/- per month. 30% increment was afforded on account of future prospects. 30% deduction was effected, keeping in view the number of dependants. Multiplier of 14 was applied as the deceased was 42 years old at that time. Additionally, a sum of ₹50,000/- on account of loss of love and affection besides a sum of ₹25,000/- on account of funeral expenses was awarded. Aggrieved therefrom, this appeal has been filed. It is informed that the claimants have not filed any appeal/cross objections for enhancement of compensation.

Learned counsel for the appellant - insurance company vehemently argues that the present is a case where contributory negligence on the part of the deceased is clear from the evidence on record. The deceased, who was travelling on his scooter, struck against a stationary truck from behind. This act in itself is per se, reflective of contributory negligence on his part. Moreover, a half empty bottle of liquor was recovered from the pocket of the deceased, which would indicate that he was drunk at that time. It is submitted that the accident in question took place at 8.00 a.m., therefore, there is no question of the deceased not being able to see the truck which was parked on the road. Thus, learned Tribunal has erred in not deducting the compensation payable to the claimants commensurate with percentage of contributory negligence, which should be assessed to be a minimum of 50%. It is further submitted that income of the

deceased has been assessed at a higher rate and should be decreased and compensation calculated accordingly. It is, thus prayed that this appeal be allowed.

Learned counsel for the claimants/respondents No. 1 to 4 while refuting the said arguments submits that there is no ground whatsoever for reduction in the compensation awarded. Moreover, learned Tribunal has rightly held that the accident in question took place due to the sole negligence of the driver of the offending vehicle in leaving the truck parked in the middle of the metalled road at night without any indicators. It is, thus, prayed that this appeal be dismissed.

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

Kuldeep Singh (PW2), on whose statement FIR No. 49 dated 25.05.2011 under Sections 279, 304A IPC was registered, has specifically stated that the deceased was running a Dhaba at Jalandhar Pathankot road and was also engaged in agricultural pursuits earning a total sum of ₹55,000/- per month. It is specifically stated that on the intervening night of 24/25.05.2011, the deceased after closing his dhaba was returning home on his scooter to his residence at Village Powara, Police Station Mukerian. The offending truck tralla bearing registration No. PB-08AX-7938 was parked in the middle of the road without any indicator. It is due to the darkness at night time that the deceased stuck against the truck from behind. PW2 stated that he got information about the accident, on receiving a phone call from some unknown person at about 8.30 a.m. in the morning. PW2 specifically stated in his cross examination that the said informant revealed that the accident had taken place at night and Balbir Singh (elder brother of

respondent No. 2) had already died. PW2 reached the spot after half an hour alongwith the husband of his sister. The police had already reached the spot and FIR was, accordingly, registered at 10.00 a.m. In the facts and circumstances of the case, argument of learned counsel for the appellant that the accident in question took place at 8.00 a.m. is totally devoid of any merit, hence rejected. There is not an iota of evidence on record to substantiate this plea sought to be raised.

Learned counsel for the appellant is unable to deny that the truck in question was stationed on the metalled road. There is no evidence on record to prove that there were any indicators reflecting the presence of the truck on the road in order to caution the travellers on the road. It has been specifically deposed by PW3 Sucha Singh, President of Dhaba Union and Ex.MC Mukerian that the said truck was lying parked since two days prior to the accident. In this view of the matter, merely because the deceased had struck against the offending truck from behind cannot per se lead to an inference of contributory negligence on the part of the deceased in the absence of any specific and positive evidence in this respect. Though it is stated that a bottle of liquor was recovered from the pocket of the deceased while referring to the statement of RW4 SI Tirath Ram, it is relevant to note that there is no evidence to show that the deceased had in fact consumed liquor. RW4 has himself admitted in his cross examination that there is no mention regarding consumption of liquor by the deceased in the Post Mortem Report or in inquest report, neither is there any report of the Chemical Examiner in respect to the viscera to indicate presence of alcohol in the body of the deceased. Thus, it cannot be concluded that the deceased was under the influence of alcohol and the accident took place due to any

negligence on the part of the deceased, which renders him guilty of contributory negligence in this case. Learned Tribunal has rightly decided this issue and the said finding is upheld.

In respect to the income of the deceased, it is noticed that the learned Tribunal has not accepted the version of the claimants to the extent that the deceased was running a Dhaba, besides being engaged in agricultural pursuits etc., thus, earning ₹55,000/- per month. Income of the deceased has been assessed as ₹4,000/- per month with reference to the minimum wages available in the District as per the rates fixed by the Deputy Collector.

Learned counsel for the insurance company is unable to deny that the minimum wage of an unskilled labourer under the Minimum Wages Act was ₹3842/- per month at the time of the accident. I do not find any infirmity in the assessment of income of the deceased at the rate of ₹4000/- per month. Multiplier of 14 has been correctly effected though instead of deduction of 1/3rd, it is a deduction of 1/4th which should have been applied. Therefore, even if the increment of 30% awarded by the learned Tribunal towards future prospects is reduced to 25% it shall not make any substantial difference. Interest at the rate of 6% has been awarded. In the given factual matrix of the case, I do not find any ground whatsoever to reduce the total compensation awarded to the appellants.

No other argument has been raised.

Appeal is, accordingly, dismissed.

September 18, 2019
rts

(Lisa Gill)
Judge