

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

F.A.O. No. 3577 of 2013

DATE OF DECISION :- March 18, 2019

The New India Assurance Company Ltd.

...Appellant

Versus

Sh. Rajiv Joshi and others

...Respondents

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

Present:- Mr. Neeraj Khanna, Advocate for the appellant.

Mr. Ashwani Arora, Advocate
for respondents No. 1, 2, 4 and 5.

On account of death of Sh. Rajiv Joshi, aged about 82 years, who had retired from government service, in a motor vehicular accident which took place on 22.10.2011 in the area of dividing road of Sector 46 and 47, Chandigarh statedly on account of rash and negligent driving of a Car bearing No. CH-01-AB-9868 by respondent no. 6 Darshan Singh, legal representatives of deceased i.e. his two sons S/Sh. Rajiv Joshi and Rajan Joshi aged 40 years and 44 years respectively and three daughters namely Ms. Kamlesh Kumari, aged about 57 years, Smt. Sneha Lata, aged about 59 years and Smt. Parmila Sharma, aged about 48 years, had brought a petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Darshan Singh (driver-cum-owner) and The New India Assurance Company, NAC, Manimajra, U.T. Chandigarh-insurer of Car in question, claiming compensation to the tune of Rs.30,00,000/-.

Sh. Narinder Joshi, a son of the deceased was impleaded as proforma respondent No. 3.

On notice, the respondents put in appearance and filed written statements contesting the claim petition.

Following issues on merits were framed :-

“i) Whether the accident dated 22.10.2011 causing the death of Ram Rattan has occurred on account of rash and negligent driving of vehicle bearing No. CH-01-AB-9868 being driven by Respondent No. 1? OPP.

ii) If issue No. 1 is proved in favour of claimants, whether the claimants are entitled for compensation, is so how much and from whom? OPP.

iii) Whether the respondent No. 1 was holding the valid and effective driving licence on the day of accident ? OPR.

iv) Relief.”

The parties led evidence in support of their respective claims.

After hearing arguments, The Motor Accident Claims Tribunal, Chandigarh vide award dated 4.3.2013 awarded compensation of Rs.5,79,400/- entrusted cost to the claimants.

Feeling aggrieved by the said award, respondent-Insurance Company has brought the present appeal, notice of which was given to respondent and claimants who have put in appearance.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the appellant-Insurance Company has argued that it was not established on record that accident in which the deceased lost his life had taken place on account of rash and negligent driving of the offending Car by respondent No. 1 Darshan Singh, but the Tribunal fell in

error in returning of such findings in favour of the claimants, therefore, that wrong be undone and issue be decided in favour of respondents against the claimants and as a result the claim petition be dismissed.

On the other hand learned counsel for the claimants-respondents has contended that such claimants had led enough cogent, convincing, reliable, oral as well as documentary evidence to discharge of onus of proof placed upon them with regard to issues in question and Tribunal was fully justified in deciding that issues in favour of the claimants.

After hearing learned counsel for the parties besides going through the record especially depositions of the witnesses and documents relied upon by both the parties, I find that the Tribunal rightly given verdict with respect to issue No. 1 in favour of the claimants holding that respondent No. 1 Darshan Singh was author of the accident by his rash and negligent driving of the offending Car. The trial Court has relied upon deposition of Sh. Sanjeev Nagi, who provided an eye witness account of the accident vide his affidavit PW3/A categorically attributing rashness and negligence to respondent no. 1 while driving the offending Car stating that the accident had happened before his eyes and after the accident he had moved the injured Ram Rattan Joshi to GMCH, Sector 32, Chandigarh in the same Car and subsequently the injured had succumbed to the injuries. The Tribunal has made further reference to copy of F.I.R. No. 344 dated 22.10.2011 Ex. P11 vide which a criminal case under Sections 279, 337 IPC had been registered against Darshan Singh-respondent no. 6 with Police Station Sector 31, Chandigarh. Discussing the cross-examination of RW1 Darshan Singh, wherein he admitted that F.I.R. which was registered against him with Police Station Sector 31, Chandigarh on 22.10.2011 for causing death of Ram Rattan Joshi, though he

had stated that he had made representation to Senior Superintendent of Police, Chandigarh alleging his false implication but he could not place on record any document to prove such assertions. He had further conceded that challan had been presented against him in the Court of Illaqa Magistrate where he was facing trial. The Tribunal discussing the evidence in light of the case law on the subject returned the verdict that accident dated 22.10.2011 in which death of Ram Rattan Joshi had taken place, occurred on account of rash and negligent driving of vehicle/Car bearing No. CH-01-AB-9868 by respondent no. 1.

There is no reason whatsoever to upset that finding. The second contention put up by learned counsel for the appellant-Insurance Company was with regard to quantum of compensation awarded. However, if we scrutinize the award, we find that though the deceased was aged about 82 years, he was a retired government employee drawing pension. The Tribunal referring to testimony of PW 2 Sh. Babu Ram, C.T.O.B., official of Punjab National Bank, Sector 9 Chandigarh, who had brought the record and had stated that the deceased was drawing pension through their bank which was to the tune of Rs.14,235/- per month. The statement of account in that respect was placed on record as PW2/A. The Tribunal took the monthly income of deceased as such and made deduction of 1/3rd from that amount towards personal expenses of the deceased calculating the dependency of claimant No. 3 to Rs.9490/- per month or Rs.1,13,880/- per annum. The Tribunal has noted that claimant No. 3 is unmarried daughter of the deceased who is mentally ill and was totally dependent upon the deceased and except claimant No. 3 all other claimants as well as proforma respondent No. 3 were gainfully employed and are married. The Tribunal has concluded that claimants No. 1 to 4 and 5 as well as proforma respondent No. 3 were not dependent upon the deceased, therefore, claimant

No. 3 suffering from mental ailment and unmarried was found to be entirely dependent upon the earning of deceased, as such she was held entitled to get compensation. The Tribunal used multiplier of 5 which under the circumstances is proper and appropriate thereby worked out the compensation to be Rs.5,79,400/-, Rs.10,000/- has been awarded as transportation and last rites expenses.

Though in view of judgment *National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009* the claimants are entitled to get funeral expenses to the tune of Rs.15,000/- under Head loss of estate but since the claimants have not filed any separate appeal or cross objections in this case asking for enhancement of compensation awarded, therefore, I refrain from enhancing expenses under those Heads. But in any case, no ground to reduce the compensation awarded is made out. No other argument was advanced or put forward by learned counsel for appellant-Insurance Company. The Award passed by Motor Accident Claims Tribunal, Chandigarh is well reasoned, based on proper appraisal of appreciation of evidence and correct interpretation of law. There is no illegality or infirmity there with. The said award is upheld. The appeal is found to be without merit and is dismissed accordingly.

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

March 18, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No