

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

FAO-5044-2014(O&M)

Date of decision:-27.5.2019

The New India Assurance Company Ltd.

...Appellant

Versus

Mansa Devi and others

...Respondents

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

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

Mr.Sanjeev Patiyal, Advocate
for respondents No.1 to 3.

Mr.Vikram Bali, Advocate
for respondent No.4.

H.S. MADAAN, J.

Smt.Mansa Devi aged about 55 years – mother, Smt.Kusum Lata aged 29 years – wife and Master Anmol aged 2 years – minor son of Desh Raj, 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. Mona Dhawan – owner, Jashandeep Singh (since dead) through his father Sh.Surjeet Singh – driver and New India Insurance Company Ltd. - insurer of car having registration No.PB-11-AQ-0304 (hereinafter referred to as the offending car) claiming compensation to the tune of Rs.20 lacs.

As per the case of the petitioners/claimants, on 27.12.2010,

deceased Deshraj was travelling in the offending car being driven by its driver Jashandeep Singh, who was allegedly driving it in a rash and negligent manner and resultantly it struck against the room of tax barrier after crossing Balongi leading to Deshraj and Jashandeep Singh receiving multiple injuries, to which they had succumbed at the spot.

On notice all the three respondents appeared and offered a contest. Vide Award dated 2.12.2013, learned Motor Accidents Claims Tribunal, SAS Nagar(Mohali) allowed the claim petition and awarded compensation of Rs.10,05,120/- to the claimants along with interest @ 6% per annum, if the payment is made within three months, failing which, the claimants would be entitled to interest @ 9% per annum, payable by respondents No.1 and 3 jointly and severally. The manner in which the compensation is to be apportioned is also given in the award.

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. Respondents No.1 to 4 put in appearance through counsel.

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

Learned Tribunal on analysis of the evidence adduced before it, has returned a finding that the accident in question had taken place due to rash and negligent driving of the offending car by Jashandeep Singh (since dead) and Deshraj had expired due to suffering injuries in that accident. Such finding is being challenged by the appellant – insurance

company for the reason that deposition of PW3 Kartar Singh is not reliable and rather it comes out that he was a procured witness and was not present at the spot and furthermore the Tribunal had lost sight of the fact that no FIR had been registered with regard to the accident and DDR had been recorded on the basis of statement of one Narinder Singh, who had stated that the accident had not taken place due to fault of any person, rather it was a natural act. According to the appellant – insurance company the claimants had not examined Narinder Singh, who was the best witness to establish the case of claimants and an adverse inference is to be drawn against them.

However, I do not find any force in these contentions. A criminal action and filing of claim petition under Section 166 of the Motor Vehicles Act are two separate remedies available to a person receiving injuries in a road side accident or whose earning member had expired in such accident. Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions.

After going through the testimony of PW3, I do not see any reason to discard the same, rather it comes out that he deposed in a natural and convincing manner and his deposition inspires confidence. He stood the test of cross-examination, while merely because he had not gone to the police and report the matter regarding the accident does not go to show

that he was not present at the spot and had in fact not seen the accident. The evidence produced by the claimants to show that respondent No.2 Jashandeep Singh was author of the accident by his rash and negligent driving of the car in question has gone unrebutted. Jashandeep Singh having perished in the accident could not possibly appear before the Tribunal. Nevertheless the respondents could examine any other person, who had seen the accident may be Narinder Singh, who according to them had lodged the DDR but they did not do so. No adverse inference can be drawn against the claimants for non-examination of Narinder Singh. The Tribunal by giving proper reasoning and considering the facts and circumstances of the case and law on the subject has decided issue No.1 in favour of the claimants and against the respondents and no inference therewith is called for.

The second contention raised by the appellant – insurance company is with regard to the quantum of compensation and its liability to pay the same coming with a plea that the deceased did not come within the definition of third party and was insured only up to an amount of Rs.1,00,000/-, in that way at least recovery rights should have been granted to insurance company to recover the amount paid in excess of Rs.1 lakh.

This point is not shown to have been argued before the Tribunal, which had found the liability of respondents No.1 and 3 to be there to pay the compensation amount jointly and severally. It has to be kept in mind that it was a package policy and the deceased is to be taken as a third party for which liability is of insurance company and the

insurance company cannot deny its liability to pay compensation to the claimants or limit its liability upto Rs.1,00,000/-.

Learned counsel for the appellant insurance company has referred to a judgment by Delhi High Court i.e. **Yashpal Luthra and Anr. Versus United India Insur. Co. Ltd. & Anr., 2011 ACJ 1415** wherein the insurance company had admitted that risk of pillion rider on two-wheeler and also passenger in a private vehicle was covered under Comprehensive/Package policy w.e.f. 25.3.1977 as per circular of Tariff Advisory Committee dated 18.3.1978 and had withdrawn the contest on that ground.

The Tribunal had taken age of the deceased to be 35 years, his monthly income as Rs.5,000/- and has allowed increase of 30% towards future prospects.

However, in terms of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 40% of the amount is to be added towards future prospects making monthly income of the deceased to be Rs.7,000/-.

Keeping in view the number of dependents upon him to be three i.e. the claimants $\frac{1}{3}$ rd amount is to be deducted towards personal expenses of the deceased, in that way the dependency of claimants comes out to Rs.4,667/-(7000 - 2333) per month, annual dependency comes out to Rs.4,667 x 12 = Rs.56,004/-.

The Tribunal has used multiplier of 15, which keeping in view the age of the deceased has been properly used. Doing that the

compensation payable comes out to Rs. 56,004 x 15 = 8,40,060/-.

The Tribunal has granted compensation of Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of care and guidance for minor child and Rs.25,000/- towards funeral expenses. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs.8,40,060 + 70,000 = 9,10,060/-.

The Tribunal has wrongly awarded compensation of Rs.10,05,120/-. The same is reduced to Rs.9,10,060/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.9,10,060/-. Other terms and conditions in the original award shall remain the same. Amount if paid in excess be refunded by the claimants at the earliest.

With such modification, the appeal is allowed partly with costs.

27.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No