

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

FAO-3183-2016(O&M)

Date of decision:-10.5.2019

National Insurance Co. Ltd.

...Appellant

Versus

Santosh Rani and others

...Respondents

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

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

Mr.Sandeep Jasuja, Advocate
for respondents No.1 to 4.

Mr.G.C. Shahpuri, Advocate
for respondent No.5.

H.S. MADAAN, J.

Petitioners/claimants Smt.Santosh Rani – mother, Smt.Jyoti
-wife, Master Aadvik and Master Yuvraj – minor sons of Sanjeev Narang,
an unfortunate victim of a road side accident had brought a claim petition
under Section 166 of the Motor Vehicles Act against the respondents i.e.
Mangal Singh – owner and driver of Canter bearing registration No.PB-
10BU-4507 (hereinafter referred to as the offending canter), Karam
Chand, National Insurance company, Malout – insurer of the offending
canter besides Sardool Singh – owner of Cruiser Jeep bearing registration
No.PB-05N-5629 and Dhyanu – driver of the said Cruiser jeep, claiming

compensation to the tune of Rs.60,75,000/-.

As per the case of the claimants on 22.12.2011 deceased Sanjeev Narang was travelling in Cruiser Jeep bearing registration No.PB-05N-5629; that Raman Sachdeva, Sanjeev Tinna, Mohan Lal were also travelling in the said jeep; that they were going from Fazilka to Bathinda; that driver of the jeep was overtaking the vehicle going ahead to him and suddenly the offending canter being driven in a rash and negligent manner by respondent No.1 rammed into the jeep; that the respondent No.1 had time and opportunity to avert the accident by providing space to the jeep; that deceased Sanjeev Narang was an employee in BDPO Office, Fazilka and he was aged about 27 years, earning Rs.29,144/-.

On notice, respondents No.1 to 3 had appeared and filed separate replies to offer a contest. In the written reply filed on behalf of respondent No.1, he came up with a stand that the accident had taken place due to rash and negligent driving of the jeep by respondent No.4 due to which the canter of answering respondent had suffered damage though it was insured with the insurance company.

Respondent No.2 in the written reply filed by him had taken up various statutory defences and that the insurance of alleged offending vehicle was also disputed. On merits, it was contended that the FIR was wrongly registered regarding the accident.

In the written reply of respondent No.3, it took up various legal objections challenging the locus standi of the claimants to file the petition denying that any cause of action had arisen to them to do so

further coming up with a plea that the petition was bad for misjoinder of necessary parties. On merits, refuting the remaining allegations, the answering respondent denied any liability to pay compensation to the claimants.

In the end, respondents No.1 to 3 prayed for dismissal of the claim petition.

The claimants by making statement before the Tribunal had withdrawn the petition against respondent No.1(a) – Karam Chand, whereas respondent No.4 had not appeared despite service, as such was proceeded against ex parte.

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

1. Whether the death of Sanjeev Narang son of Raj Kumar caused by respondent no.1(driver and owner) while driving Canter bearing no.PB-10BU-4507 in rash and negligent driving on 22.12.2011, at about 8:30 A. in the area of City Giddarbaha? OPC.
2. Whether the claimants are the legal representatives of deceased Nirmal Singh son of Darshan Singh? OPC.
3. Whether the claimants are entitled to compensation, if so to what amount and from whom? OPC.
4. Whether the claim petition is not maintainable under the provisions of Sections 147/149/152/157/158/170 & 172 of MV Act? OPR.
5. Whether the term and condition of the insurance policy does not permit the claim of the claimants? OPR.
6. Whether the petition is bad for non-joinder and mis-joinder of

necessary parties? OPR.

7. Whether the claim claim petition is not maintainable as per preliminary objection taken by respondent no.2? OPR no.2.

7(a)Whether the death of Sanjeev Narang son of Raj Kumar is caused by contributing negligence of respondent no.1 of driver of vehicle no.PB-10BU-4507 and driver of vehicle no.PB-05N-5629 of Cruiser Jeep i.e. respondent no.4 is caused while driving rash and negligent driving on 22.12.2011 at about 8:30 A.M. in the area of City Giddarbaha? OPR.

8. Relief.

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

In support of their case, the claimant No.1 Smt.Santosh Rani got recorded her statement as PW1 besides examining Sh.Mohan Lal as PW2.

On the other hand, respondent No.1 Mangal Singh appeared as RW1 and the respondents further examined HC Chhotu ram as RW2.

After hearing arguments, while allowing the claim petition, the Tribunal awarded a compensation of Rs.60,75,000/- with interest at the rate of 6% per annum from the date of filing of the claim petition, in case the payment was made within three months from the date of award and in default, the claimants would be entitled to interest at the rate of 9% per annum from the date of claim petition till payment. The manner in which the compensation is to be apportioned was also given in the award.

This award left the respondent No.2 - insurance company

aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimant.

Notice of the appeal was given to respondents. However, only respondents No.1 to 5 have put in appearance through counsel.

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

The first and foremost argument advanced by learned counsel for the insurance company was that it was a case of head on collision and the main fault was of jeep driver, who had caused the accident while in the process of overtaking another vehicle. He should have been cautious enough to see that adequate space was available so that the jeep could pass and overtake the vehicle but he did not do so resulting in the accident and it was against the jeep driver that formal FIR was registered, even then the Tribunal put the entire blame on the canter driver simply for the reason that he was driving the bigger vehicle.

I find merit in the argument advanced by learned counsel for the insurance company. Keeping in view the facts and circumstances of the case, the manner in which the accident had happened and the fact that FIR was lodged against the jeep driver, putting the entire blame for the accident on the canter driver was not justified, rather at the most it can be said to be a case of contributory negligence, since the drivers of both the vehicles had left something to be desired while driving their respective vehicles resulting in the accident. The Tribunal has decided issues No.1

and 7A holding that Mangal Singh – respondent No.1 was driver of big vehicle and was supposed to be more careful and vigilant and he was negligent while driving the offending canter. The finding is wrong based upon erroneous appreciation of evidence and incorrect interpretation of law. Therefore, issues No.1 and 7A are decided holding that the accident in which Sanjeev Narang lost his life had taken place on account of rash and negligent driving of the offending canter by respondent No.1 and Cruiser Jeep bearing registration No.PB-05N-5629 by respondent No.4.

Coming to the findings on issues No.2 and 3, the Tribunal has taken age of the deceased to be 27 years, his salary as Rs.27,189/- in view of the salary certificate Ex.P1, annual salary Rs.3,26,268/- noting that Rs.1,60,000/- was exempted from income tax in that year and remaining amount was taxable to 10%, his tax liability was worked out to Rs.16,500/- per annum after surcharge, cess etc. and lump sum annual salary was taken as Rs.3,10,000/-. Thus the monthly income comes out to Rs.25,833/-.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 50% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.25,833 + 12916 = Rs.38,749/-.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, deduction towards self-expenses is to be taken as 1/4th. Doing that the dependency of claimants comes out to Rs.29,062/- per

month, annual dependency comes out to Rs.29,062 x 12 = Rs.3,48,744/-.

The Tribunal has used multiplier of 17 which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 3,48,744 x 17 = 59,28,648/-.

The Tribunal has awarded a sum of Rs.1 lakh towards loss of consortium, Rs.1 lac towards loss of care and guidance for children and Rs.25,000/- towards funeral expenses. 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. 59,28,648 + 70,000 = 59,98,648/-.

The Tribunal has wrongly awarded compensation of Rs.60,75,000/-. The same is reduced to Rs.59,98,648/-. The claimant 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.59,98,648/-. Other terms and conditions in the original award shall remain the same.

In view of the judgment **Khenyei Versus New India Assurance Co. Ltd. & Ors., 2015(2) RCR(Civil) 1019**, respondent No.2 – insurance company would pay the entire compensation awarded to the claimants. However, it can recover 50% of the amount from owner and driver of the Cruiser Jeep bearing registration No.PB-05N-5629 namely Sardool Singh and Dhyanu (respondents No.3 and 4) by filing an

execution application before the Tribunal.

The findings recorded by the Tribunal on issues No.4, to 7 are correct and do not call for any interference.

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

10.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No