

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 4195 of 2016 (O&M)
Date of decision: 24.09.2019

National Insurance Co. Ltd.

...Appellant

V/s.

Shaili and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. S.S.Sidhu, Advocate for the appellant.

Mr. Upender Prasher, Advocate for
respondents No. 1 and 2.

Mr. Bikramjit Aroura, Advocate for
respondents No. 4 and 5.

RITU BAHRI, J. (Oral).

CM-14386-87-CII-2016

For the reasons mentioned in the applications, the same are
allowed and the delay in filing and refiling the appeal is condoned.

FAO-4195-2016(O&M)

The insurance company has come up in appeal against the
award of the tribunal dated 04.01.2016 whereby compensation of
Rs.12,10,000/- has been awarded to the claimants on account of death of
Nishan Singh, who died in a road accident which took place on 14.05.2014.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 14.05.2014 at about 4:00p.m.,
Nishan Singh while sitting on the pillion of motor cycle bearing No. PB-02-
CE-8748 being driven by Judgebir Singh son of Ninder Singh, was going
towards Amritsar from village Jhite Kalan. His father Arjan Singh

alongwith Manga Singh were following them on separate motor cycle. When Judgebir Singh and Nishan Singh on their motorcycle reached at traffic signal lights chowk, Taran Wala bridge, Amritsar, offending truck bearing No. PB-02-BG-9661 being driven by respondent No. 1 Tarsem Singh at a very high speed and without blowing any horn, came from opposite side i.e. from the side of Kot Mit Singh. Respondent No. 1 Tarsem Singh while driving the offending truck in a rash and negligent manner, without caring for the traffic signal jumped the red light signal and struck his truck with the motorcycle upon which Nishan Singh was sitting as pillion rider. Due to this collision, both Nishan Singh and Judgebir Singh fell on the road and sustained serious injuries. The motor cycle was also badly damaged. Arjan Singh alongwith Manga Singh arranged for a conveyance and got both Nishan Singh and Judgebir Singh admitted in Plus Hospital, Mehta Road, Amritsar, where Nishan Singh succumbed to his injuries on the same day. The accident took place on account of sole rash and negligent driving of respondent No. 1. After the accident an FIR No. 97 dated 14.05.2014 under Sections 304-A/279/337/338/427 IPC was registered at Police Station Sultanwind, Amritsar. Consequently, the claimants-appellants filed a claim petition before the tribunal.

On notice of the claim petition, respondents filed their written statements and on pleadings of the parties, following issues were framed:-

1. "Whether Nishan Singh son of Arjan Singh died in accident due to rash and negligent driving of truck bearing registration No.PB-02-BG-9661 by respondent No. 1, Tarsem Singh, on 14.05.2014 at 4 p.m. in the area of traffic signal lights chowk, Tarn Wala bridge, Amritsar? OPP.
2. Whether the petition is not maintainable? OPR

3. Whether the claimants have not come to the court with clean hands and have suppressed material facts from the court? OPR
4. Whether respondent No. 1 was not having a legal and valid driving licence at the time of accident, if so, its effect? OPR-3
5. Whether the respondent No. 2, insured/owner of offending vehicle has violated the terms and conditions of insurance policy, if so, its effect? OPR-3
6. Whether the petitioners/claimants are entitled to recover any compensation, if so, the amount and from whom? OPP
7. Relief.”

The insurance company has filed this appeal with respect to finding on issue Nos. 2 and 3 that the petition is not maintainable and that the claimants have not come to the court with clean hands and have suppressed material facts from the court.

Learned counsel for the insurance company has argued that initially the claim petition was moved under the name of Sonia and subsequently application for amendment was allowed and name was amended as Shaili and while appearing in the witness box as PW2 she stated in her cross-examination that she never filed any petition showing her name as Sonia. On the other hand, learned counsel for the claimants stated that claimant No. 1 was known as Sonia before marriage.

Learned counsel for the insurance company has further argued that it is a case of misrepresentation as the claimant has not led sufficient evidence to show that she was legally wedded wife of the deceased and claimant No. 3 was the daughter.

Heard learned counsel for the parties and perused the case file. The tribunal has examined the above said issues in para 16 which shows that as per the certified copy of petition Ex.P6, Nishan Singh and claimant No. 1 Shaili performed marriage with each other on 24.05.2013 against the

wishes of parents and they moved petition for protection. Claimant No. 1 Shaili also produced on record certified copies of photographs of their marriage as well as the protection order dated 29.05.2013. Claimant No. 3 is the minor daughter of claimant No. 1 Shaili.

Keeping in view the above said evidence and in the absence of any evidence to the contrary, finding has been rightly returned that the claimants have approached the court with clean hands and does not require any interference. Hence, the appeal filed by the insurance company is dismissed.

(RITU BAHRI)
JUDGE

24.09.2019
Divyanshi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No