

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 690 of 2014 (O&M)

Date of decision : 23.5.2019

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National Insurance Company Limited, Chandigarh

.....Appellant

vs.

Karam Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr.Sandeep Suri, Advocate for the appellant

Mr. Ashwani Arora, Advocate for respondent No.1.

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H. S. Madaan, J.

Sarvshri Karam Singh, aged 36 years, Dharam Singh aged 32 years, sons and Smt. Sudeshna, aged 33 years, married daughter of Sh. Pal Chand, who expired in a roadside accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. respondent No.1 Shiv Kumar – driver, Avinder Kaur - owner and National Insurance Company Limited, Chandigarh - insurer of the car bearing No. PB-11-AV-4567 (hereinafter to be referred to as 'the offending vehicle'), claiming compensation.

As per version of the claimants on 29.11.2011, at about

4.30 a.m. Deceased Pal Chand was going from his house in Indra Colony to his office in Sector 10, Chandigarh, to report for duty there. He was pillion riding the motorcycle which was being driven by his son Dharam Singh. The motorcycle was being driven at a slow speed and on the right side of the road. When they reached near small roundabout of Sector 10, Chandigarh, in front of Leisure Valley, car No. PB-11-AV-4567 – the offending vehicle, being driven by respondent No.1 Shiv Kumar, in a rash and negligent manner, came from opposite side plying on wrong side of the road and struck against the motorcycle, with the result both the riders fell down and received serious injuries. Injured Pal Chand was taken to GMSH, Sector 16, Chandigarh, from where he was referred to PGI, Chandigarh, where he died on 30.11.2011. After the accident, the car driver fled away from the spot alongwith the car. FIR No. 235, dated 29.11.2011, for offences under Sections 279, 337 IPC was registered at Police Station Sector 3, Chandigarh, with regard to the accident. According to the claimants, the deceased was aged 53 years and working as Safai Karamchari in Health Department, Municipal Corporation, UT, Chandigarh, earning Rs.23,000/- per month, approximately.

On notice, all the three respondents appeared and filed written statements. Respondents No. 1 and 2 filed joint written statement, whereas respondent No.3 came up with a separate written statement, wherein while contesting the assertions made in the claim petition, raising various legal pleas, they denied their liability to pay

any compensation contending that car in question was not involved in the accident and was implicated later on.

Respondent No.3 Insurance company had taken various statutory defences also including the one that respondent No.1 was not having a valid and effective driving licence to drive the offending vehicle at the time of accident.

Issues on merits were framed. Parties were offered opportunity to lead evidence, which they availed of. Vide award dated 3.9.2013, the claim petition was accepted and a compensation of Rs.23,18,764/- was granted to the claimants, payable by the respondents jointly and severally, with interest @ 7.5% per annum from the date of filing of petition till realization.

The respondent – Insurance company felt aggrieved by the award and has approached this Court by way of filing the present appeal, notice of which was given to the respondent-claimants. Respondent No.1 has put in appearance through counsel.

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

The first and foremost contention of learned counsel for the appellant – Insurance company was that all the claimants are considerably major and they were not dependent upon earnings of the deceased, therefore, they are not entitled to any compensation. In support of his contention he has referred to authority **Smt. Manjuri Bera vs. Oriental Insurance Co. Ltd. AIR 2007 Supreme Court 1474**, wherein it was observed that daughter of deceased was entitled

to inherit his estate and in the circumstances, she was entitled to receive compensation under 'no fault liability'.

Whereas learned counsel for the claimant-respondent No.1 had referred to decision in FAO No.5452 of 2012, decided on 2.8.2013, titled as **The New India Assurance Company Ltd. Vs. Kuldeep Singh and others**, wherein it was held as follows:-

“Even if a son is major and is earning, he does not stop looking to his father for financial help. It is not a case where the sons were drawing the salary and that he could not look to their father, who was getting petty amount. Sons even if they are major do not lose the status of legal representatives about which there is reference in Section 166(1)(c) of the Act. Therefore, the major sons can maintain a claim petition for compensation on the death of their father.”

Similarly, its earlier decision by the Hon'ble High Court of Punjab and Haryana in FAO No.1772 of 2013, decided on 9.4.2013, titled as New India Assurance Company Ltd. Vs. Pushpinder Kaur and others, wherein it was held as follows:-

“4. Admittedly, the deceased had left behind not only his wife, but also his 3 major sons in the age group of 33-37. It is highly improbable that sons would not have shared anything from the income of the deceased along with their mother. As the deceased

had left behind his three sons also apart from his wife, in my view the Tribunal has rightly deducted 1/3rd of the income from the income of the deceased.”

Therefore, it cannot be said that claimants were not entitled to any compensation.

The Tribunal has taken age of the deceased as 53 years and occupation as employment in Health Department, Municipal Corporation, Chandigarh as Safai Karamchari, then making addition of 15% towards future prospects to the income and deducting 1/3rd of the amount on account of personal expenses and applying the multiplier of 11, has worked out the compensation. The compensation so awarded has been properly assessed in view of the settled law and multiplier was properly applied by keeping in view age of the deceased. There was no question of applying split multiplier simply for the reason that the deceased was supposed to retire at the age of 60 years. Of course, after retirement the deceased could have taken up any other job or engagement and started earning therefrom. Being a Government servant, pension etc. might have been payable to him. Therefore, no fault can be found with the manner of calculation of compensation by the Tribunal. As a matter of fact, the amount awarded by the Tribunal under the Conventional Heads is somewhat on the lower side. The Tribunal has awarded Rs.25,000/- towards expenses incurred on funeral and last rites of the deceased, whereas as per authority *National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,* they were entitled to

Rs.15,000/- as funeral expenses and Rs.15,000/- towards loss of estate.

Thus there is no illegality or infirmity in the award passed by the Tribunal. The award passed by the Tribunal is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Finding no merit in the appeal, the same stands dismissed.

23.5.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No