

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

FAO-5949-2015(O&M)

Date of decision:-14.2.2019

Smt.Manita

...Appellant

Versus

Niranjan and another

...Respondents

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

Present: Mr.Shashi Kumar Yadav, Advocate
for the appellant.

Ms.Vandana Malhotra, Advocate
for the respondents No.2 – Insurance Company.

H.S. MADAAN, J.

Briefly stated, facts of the case are that on 1.12.2013 Smt.Manita, wife of Sh.Niranjan Lal, aged about 25 years, resident of village Dungarwas, Tehsil & District Rewari along with her son Raman was returning to her village from Dharuhera in a tempo bearing registration No.HR-47B-4117 (hereinafter referred to as 'the tempo'); that the said tempo was being driven by her husband Niranjan Lal; that when the tempo reached near crossing of bridge in the area of village Nikhri, then an unknown vehicle struck against the said tempo due to which ill-fated tempo turned turtle and occupants thereof fell down on the road suffering injuries; that the injured were taken to Apex Hospital, Dharuhera; that Raman was declared dead, whereas Smt.Manita and her husband Niranjan Lal, who had suffered injuries were medically treated;

that an FIR No.186 dated 2.12.2013 for the offences under Sections 279, 337, 304-A IPC was registered regarding the accident with Police Station Dharuhera against driver of the unknown vehicle.

Smt.Manita had brought two claim petitions, one with respect to the injuries suffered by her in the motor vehicular accident and second on account of death of her son Raman in the said road mishap. In both the claim petitions, she had impleaded her husband Niranjana Lal owner of tempo as respondent No.1 and Chola Mandlam M/s General Insurance Company Ltd. - insurer of that tempo as respondent No.2.

In the claim petition filed by her on account of injuries suffered by her, she claimed compensation of Rs.10 lacs and in the other claim petition filed by her for the reason of death of her son Raman in the road mishap, she had claimed compensation of Rs.15 lacs.

Notice of both the claim petitions was given to the respondents, who put in appearance and filed separate written statement. In the written statement submitted on behalf of respondent No.1, he almost conceded the case of the petitioner/claimant and prayed that the claim petitions be decided accordingly. Whereas respondent No.2 – Insurance company in the written statement filed by it took up preliminary objections that no cause of action arose to the petitioner/claimant to bring the claim petitions; that respondent No.1 – driver was not having a valid and effective driving licence to drive the tempo and the tempo was being driven in violation of the terms and conditions of the insurance policy; that the driver of the Santro car was himself negligent in driving that vehicle. Such respondent denied its liability to pay any compensation on

account of the insured and prayed for dismissal of the claim petitions.

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

1. Whether Raman had died and Manita had sustained injuries in a vehicular accident arising on account of use of vehicle bearing registration NO.HR-47B-4117 as alleged in the petition? OPP.
2. If issue No.1 is proved, whether the petitioner of claim petition No.22 of 22.2.2014 is entitled to compensation? If so to what amount? OPP.
3. If issue No.1 is proved, whether the petitioner of claim petition No.23 of 22.2.2014 is entitled to compensation? If so to what amount? OPP.
4. Whether respondent No.1 was not holding a valid and effective driving licence on the date of accident? If so its effect? OPR.
5. Relief.

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

In order to prove her case, the claimant/petitioner got her statement recorded as PW3 besides examining Dr.L.C.Yadav as PW1, Constable Vijay Kumar as PW2 and Devender Yadav as PW4.

On the other hand, respondent No.1 tendered the copy of driving licence Ex.R1, copy of registration certificate Ex.R2, copy of insurance policy Ex.R3, copy of certificate of fitness Ex.R4, copy of permit Ex.R5 and copy of token Tax Ex.R6.

After hearing arguments, the Tribunal decided issue No.1 in

favour of the petitioner, issue No.2 in favour of the petitioner, issue No.3 against the petitioner and issue No.4 had become redundant. Resultantly the claim petition filed by Smt.Manita for injuries allegedly suffered by her in the motor vehicular accident was dismissed, whereas the other claim petition brought by her on account of death of her son Raman was allowed partly and a compensation of Rs.2,88,420/- with interest @ 6% per annum from the date of filing of the petition till realization with cost of the petition was awarded to the claimant payable by both the respondents jointly and severally.

Feeling dissatisfied with the award passed by the Tribunal with regard to death of Raman, the claimant has approached this Court by way of filing the present appeal seeking enhancement of the compensation awarded to her.

Notice of the appeal was given to respondent No.2 only. Respondent No.2 - insurance company had put in appearance through counsel.

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

Learned counsel for the appellant has submitted that the deceased Raman was aged about 10 years; that the Tribunal fell in error in taking his notional income to be Rs.15,000/- per annum, which was on much lower side; that no compensation has been granted under the head of love and affection and towards future prospects; that the compensation of Rs.10,000/- granted towards funeral expenses is too less; that the fact that appellant had incurred expenses of Rs.50,000/- on last rites and

transportation of dead body was ignored and no compensation was awarded for transportation of the dead body; that the interest had been granted at the rate of 6% per annum, which is also on lower side.

These contentions are strongly contested by learned counsel for the respondent – insurance company contending that it being a claim petition under Section 163-A of the Motor Vehicles Act, the compensation was to be awarded as per schedule provided in the Act. The Tribunal has rightly taken the notional income of the deceased and awarded compensation under various other heads as provided in the schedule and no case for enhancement is made out.

In support of his contentions, learned counsel for the appellant has referred to judgment passed by a Co-ordinate Bench of this Court in FAO-2834-2016 titled 'Sunita Devi and another Versus Vijay Pal and others'. However, this judgment is of no help to the appellant since it was with respect to claim petition filed under Section 166 of the Motor Vehicles Act and not under Section 163-A of the Act. Learned counsel for the appellant has further pressed into service authority **Kishan Gopal and another Versus Lala and others, 2013(4) RCR(Civil) 276** by Hon'ble Supreme Court. This authority does not relate to a claim petition under Section 163-A of the Motor Vehicles Act and the observations made therein are not helpful to the case of the appellant/claimant.

The claim petition under Section 163-A is to be decided as per the structured formula provided in the schedule itself and the Tribunal has awarded the compensation in terms thereof. Finding that the deceased was aged about 10 years and was a non earning member of the family, his

income was taken to be Rs.15,000/- per annum and multiplier of 18 was adopted and compensation was worked out to Rs.2,70,000/-. Rs.10,000/- was awarded on account of expenditure on funeral and last rites of deceased, though the amount provided in the schedule is Rs.2,000/- only and Rs.2,500/- could be given under the head loss of estate. The Tribunal has shown some indulgence to the claimant in awarding compensation. An amount of Rs.8,420/- spent on the treatment of deceased Raman prior to his death has also been given working out the total amount to be Rs.2,88,420/-.

Therefore, in my considered view, the compensation payable to the claimant on account of death of Raman has been properly worked out and there is no scope for any enhancement.

Therefore, finding no merit in the present appeal, the same stands dismissed.

14.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No