

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

X-OBJC-25-CII-2018 and
FAO No. 5968 of 2016 (O&M)
Date of decision: 13.11.2019

United India Insurance Co. Ltd.

...Appellant

V/s.

Suman and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant.

Mr. S.S.Sahu, Advocate
for respondents No. 1 to 4.

Mr. S.S.Sandhu, Advocate for
Mr. Amit Rana, Advocate for
respondents No. 5 and 6.

RITU BAHRI, J. (Oral).

The insurance company has come up in appeal against the award of the tribunal dated 18.05.2016 whereby the claimants have been awarded compensation of Rs.20,25,100/- on account of death of Dayal Singh, who died in a road accident which took place on 15.06.2014.

Brief facts of the case are that on 15.06.2014, at about 6:00 p.m. Dayal Singh (since deceased) was going to village Khokha Kharkadi from village Mehuwala on motorcycle bearing registration No.HR-20Y-5202 and when he reached near the Brick kiln in between the village Dhingsara and Maanawali, the offending vehicle TATA 407 bearing registration No.RJ-31GA-2610 being driven by its driver Pat Ram/respondent No.1 at a very high speed, rashly and negligently, in a

careless and zig-zag manner and without adhering to the traffic rules, came from the opposite side and struck into the motorcycle of Dayal Singh (since deceased). As a result of which Dayal Singh (since deceased) sustained multiple, grievous and serious injuries on his head, forehead and other parts of the body. After the accident, he was rushed to General Hospital, Fatehabad in an ambulance and due to his serious condition, he was admitted in Sarvodya Multispeciality Hospital, Hisar where he succumbed to his injuries. The police of Police Station Bhattu Kalan recorded the statement of Chhotu Ram and on his statement, FIR No. 201 dated 16.06.2014 had been registered in the Police Station Bhattu Kalan. The accident took place due to sole rash and negligent driven of respondent No.1. Consequently, the claimants filed a claim petition before the tribunal.

The tribunal has given a finding on issue No.1 that Chhotu Ram who appeared as PW5, and also the author of the FIR had stated in FIR that unknown driver of vehicle TATA 407 had caused the accident. Thereafter he made a supplementary statement on 23.07.2014 copy of which is Ex.P8. Thereafter driver Pat Ram/respondent No.1 was produced before him by the owner of the offending vehicle and on completion of investigation, challan was presented against the driver Pat Ram (Ex.P9). Further PW6 Jitender Kumar, Criminal Ahlmad of the Court of learned Judicial Magistrate 1st Class, Fatehabad who brought the criminal case file bearing No. 201 dated 16.06.2014 deposed that charge was framed on 09.10.2014 against accused (respondent No.1) and respondent No.1 was charge-sheeted (Ex.P18). Keeping in view the judgment passed by this Court in ***Gurdeep Kaur V/s. Tarsem Singh 2008(2) RCR (Civil) 774***

(*P&H*), the tribunal held that accident occurred on account of rash and negligent driving of respondent No.1.

Learned counsel for the insurance company is challenging the finding on issue No.1 and vehemently argued that Chhotu Ram was not an eye-witness and his supplementary statement dated 23.07.2014 (Ex.P8) cannot be made basis to return above said finding that the accident took place on 15.06.2014 due to rash and negligent driving of respondent No. 1 and Pat Ram was the driver of the offending vehicle which had caused the accident.

Learned counsel for the insurance company is also challenging quantum of compensation. He argued that in the year 2014, the minimum wages prevalent were Rs.5,547/- and the income assessed by the tribunal is on higher side. Further the deceased was 29 years of age and as per the *National Insurance Company Limited Vs. Pranay Sethi and others*, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017), only 40% future prospects should have been given.

Heard learned counsel for the parties and perused the case file.

A perusal of para 13 of the award shows that PW5 Chhotu Ram deposed that on 15.06.2014, at about 7:00 p.m., he received telephonic call from mobile phone of Dayal Singh (since deceased), his brother-in-law and was informed that Dayal Singh had met with an accident with one vehicle in between Manawali and Dhingsara near the brick kiln, upon which he reached at the spot and at that time the passersby were shifting Dayal Singh in an ambulance and at that time Dayal Singh was conscious and when he inquired the matter from him, Dayal Singh told him that one vehicle TATA 407 whose driver name was not known, came from the opposite side, at a

very high speed, rashly and negligently and struck into the motorcycle of Dayal Singh and after that Dayal Singh became unconscious. In this backdrop, Chhotu Ram had got the FIR registered. Since the description of the vehicle was given by Dayal Singh himself, supplementary statement given by Chhotu Ram (Ex.P8) has been rightly accepted by the investigating agency and thereafter driver respondent No.1 Pat Ram was produced before him by the owner of the offending vehicle on 01.08.2014 and challan was presented against respondent No.1. (Ex.P9).

This finding has been rightly given in favour of the claimants as Chhotu Ram has been cross-examined and his version is found to be correct that he was not an eye witness and reached the spot after receiving mobile call from Dayal Singh who was conscious after the accident took place. Hence, finding on issue No. 1 is not liable to be interfered with.

With respect to quantum of compensation, the tribunal observed that the deceased Dayal Singh was an agriculturist and as per PW4 Smt. Suman, the widow of Dayal Singh, Dayal Singh used to cultivate his family land measuring 2 acres and also the land measuring 13 acres by taking the same on contract basis and was also running the milk dairy in the village. Further copy of jamabandi for the year 2011-12 had been produced as Ex.P10 and the statement of account of the dairy had also been exhibited as Ex.P5 to Ex.P7. However, in the absence of any cogent evidence with regard to income of the deceased Dayal Singh, the tribunal had assessed his income as Rs.7,800/- per month keeping in view the minimum rate of wages of a daily wager in the year 2014.

A perusal of para 25 of the award shows that ownership of the deceased Dayal Singh over land has been duly proved by jamabandi for the

year 2011-12 (Ex.P10) and the fact that he was also running dairy is also proved by placing on record statements of account as Ex.P5 to Ex.P7. The income of the deceased has been rightly assessed. However, 40% future prospects has to be added instead of 50%.

Hence, to meet the ends of justice, the compensation is hereby reassessed keeping in view the income as Rs.7,800/-p.m. and the judgment passed by Hon'ble the Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others*, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	7,800/-p.m.
(ii)	40% future prospects	7,800+3,120=Rs.10,920/-
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased	10,920-2,730=Rs.8,190/-
(iv)	Compensation after multiplier of 17 is applied	8,190X12X17=Rs.16,70,760/-
(v)	Treatment expenses	Rs.10,000/-
(vi)	Funeral expenses	Rs.25,000/-
(vii)	Loss of consortium	Rs.1,00,000/-
(viii)	Loss of love and affection	Rs.1,00,000/-
	TOTAL COMPENSATION AWARDED	Rs.19,05,760/-

The total amount of compensation comes to Rs.19,05,760/-. This Court vide order dated 24.03.2017 had stayed compensation beyond 50%. Keeping in view that 50% compensation has already been released to the claimants, the remaining amount shall be payable within a period of two months from the date of receipt of certified copy of this order. The remaining amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of *Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others*, Civil Appeal No.

4528 of 2019. Remaining conditions of disbursal of amount shall remain unaltered.

With these observations, the appeal of the insurance company is being partly allowed and cross objections filed by the claimants and application (if any) stand dismissed.

(RITU BAHRI)
JUDGE

13.11.2019
Divyanshi

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