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

**F.A.O. No. 5728 of 2019(O&M)**
**Date of Decision: 17.09.2019**

Bharti AXA General Insurance Company Limited

......Appellant.

Versus

Vimal Cheema and others

...... Respondents

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr.Sanjeev Goyal, Advocate
for the appellant-Insurance Company.

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**LISA GILL, J (Oral).**

This appeal has been filed by the Insurance Company challenging award dated 05.04.2019, passed by the learned Motor Accident Claims Tribunal, Rupnagar (for short 'Tribunal'), whereby the appellant-Insurance Company was held liable to pay the compensation to the claimant-respondents.

As per averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'Act'), Kuljeet Singh @ Amritpal Singh (deceased) on 07.01.2017, was going to Mohali side from Rajpura, on a motorcycle bearing registration no. PB-65-G-5733 at a normal speed and on the left side of the road. Kuldeep Singh, his brother was following him in car bearing registration no. CH-74-T-0337. At about 9.00.p.m., when they crossed college of Tangori, a Figo car bearing registration no. PB-65-X-5233, being driven by its driver in a rash and negligent manner overtook the car of Kuldeep Singh and struck against the motorcycle of Kuljeet

Singh from behind and dragged it for some distance. The motorcycle as well as the offending car fell in the ditches. As a result thereof, Kuljeet Singh received grievous head injuries as well as compound fractures on his body. He was taken to Civil Hospital Phase-6, Mohali, where he was declared brought dead by the doctors. FIR No. 06 dated 08.01.2017, under Sections 279, 304-A, 427 IPC, Police Station Sohana, was registered, in this respect.

Learned tribunal on considering the evidence on record concluded that Kuljeet Singh @ Amritpal Singh died due to the injuries received by him in a motor vehicle accident which took place on 07.01.2017 as described above. Income of the deceased was assessed as Rs. 2,60,000/- per annum on the basis of the income tax returns for the assessment year 2013-14, Ex.P-27. A total sum of ₹41,00,875/- was awarded by the learned tribunal, which is detailed as under:-

| | | |
|---|---|---|
| 1. | Total income of deceased | ₹2,60,000/- p.a. |
| 2. | Addition | 40% |
| 2. | Deduction | 1/4th |
| 3. | Multiplier | 15 |
| 4. | Loss of funeral expenses | ₹15,000/- |
| 5. | Loss of estate | ₹15,000/- |
| 6. | Loss of consortium | ₹40,000/- |
| | **Total** | **₹41,00,875/-** |

Learned counsel for the appellant-Insurance Company vehemently argues that the driver of the offending vehicle has been transposed at a later stage. In-fact, it is somebody else who was driving the car at the relevant time and respondent-Bhupinder Kaur, arrayed as respondent no.-6 in the present appeal, has been wrongly mentioned to be the driver at the relevant time only because she had a valid driving license.

The car was being driven by somebody else, who did not have a valid driving license. Thus, the Insurance Company cannot be held liable. In the alternate, it is contended that income of the deceased has been wrongly assessed as ₹2,60,000/- per annum on the basis of an income tax return which was filed two years prior to the accident in question. There is in-fact no evidence on record to indicate the exact income earned by the deceased at the time of the accident. Therefore, his income should be assessed with reference to the minimum wage available to a skilled labourer in the State of Punjab, at the relevant time. It is also submitted that the said income tax return was not proved in accordance with the provisions of law, therefore, the same should be ignored. It is thus prayed that present appeal be allowed and the appellant-Insurance Company should be exonerated of its liability to pay the compensation and in the alternate, the awarded compensation be reduced.

I have heard learned counsel for the appellant-Insurance Company and have gone through the photocopy of the record produced in Court today by him.

Claimants in order to prove the occurrence of the accident, examined PW-2-Kuldeep Singh, who is an eye witness of the accident in question. FIR No. 6 dated 08.01.2017, Ex.P-1, was registered on the basis of his statement. PW-2 has specifically stated that the offending car was being driven in a rash and negligent manner at a very high speed by its driver which struck the motorcycle of the deceased in the rear, dragged the motorcycle to some distance and the motorcycle as well as the offending car, ran over into the ditches. The driver of the car by taking benefit of darkness, fled from the spot leaving the car behind. This is the version which has been given at the very outset in the FIR itself as well.

It is relevant to note that the accident in question admittedly took place at about 8.00.p.m., on 07.01.2017, when it is obviously dark. It is argued by learned counsel for the appellant that the description of the driver has not been given in the FIR and neither is it mentioned in the FIR that the driver was a woman, therefore respondent no.6 cannot be presumed to be the driver.

I do not find any merit in this argument as it is clearly stated by PW-2-Kuldeep Singh that driver of the offending vehicle by taking the benefit of darkness, fled from the spot. Therefore, it is not justified to presume the transposition of another person as a driver merely on the ground of description of the driver not being given in the FIR. Moreover, it is opposed to all probabilities that a young girl would have been falsely involved in the matter needlessly. The matter was duly investigated by the police as is borne out from the testimony of PW-4-HC Surinder Singh. Final report under Section 173 Cr.P.C., is on record as Ex.P-14. The car was recovered from the spot itself. This contention raised on behalf of the appellant-Insurance Company, is rejected being devoid of any merit. Finding of the learned tribunal on issue no.1 in respect to the accident being caused due to rash and negligent driving of the offending vehicle by respondent no.1-Bhupinder Kaur, is affirmed.

The deceased is claimed to be a property dealer having an office under the name and style of 'Saini Property Dealer' on Chandigarh road, Rupnagar. PW-3-Kuljeet Singh son of Hazura Singh, deposed that he along with deceased-Kuljeet Singh @ Amritpal Singh were jointly doing their work. Sale deeds Ex.P-29 to Ex.P-41 have been placed on record to substantiate the same. Income tax return of the deceased for the assessment year 2011-12, shows the income of the deceased to be ₹1,59,500/- (Ex.P-24), ₹2,12,500/- for the assessment year 2012-13 (Ex.P-25), ₹2,43,565/- for the assessment year 2013-14 (Ex.P-26-Ex.P-27) and ₹3,06,200/- for the assessment year 2016-17 (Ex.P-28).

Learned tribunal has rightly ignored the income tax for the assessment year 2016-17, Ex.P-28 on the ground that it was filed after the death of Kuljeet Singh @ Amritpal Singh. Reliance has been placed on the income tax returns for the assessment year 2013-14, wherein income of ₹2,43,565/- per annum is reflected. Learned tribunal has also given the benefit of approximate deductions of ₹23,644/- which were afforded to the deceased as reflected in the said return. Learned counsel for the appellant-Insurance Company is unable to point out any evidence on record to indicate that the said income tax return is fraudulent, fabricated, forged or that the income of the deceased had decreased till the time of the accident. In this view of the matter, I do not find any ground whatsoever to interfere in the assessment of the income of the deceased as ₹2,60,000/- per annum arrived at by the learned tribunal at the instance of the appellant.

Learned counsel for the appellant-Insurance Company is unable to point out any illegality or infirmity in the impugned award dated 05.04.2019, passed by the learned tribunal, Rupnagar, which calls for interference by this Court, at the instance of the appellant-Insurance Company.

There is a delay of 36 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal is rendered academic. Application is accordingly disposed of.

No other argument has been raised.

Appeal is accordingly dismissed with no order as to costs.

**[LISA GILL]**
**Judge**

**17.09.2019**
**s.khan**

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