

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

F.A.O. No. 1960 of 2017

DATE OF DECISION :- November 13, 2019

National Insurance Company Limited

...Appellant

Versus

Smt. Balwanti and others

...Respondents

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

Present:- Mr. Vinod Gupta, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for respondents No. 1 to 4.

Mr. Ashish Rana, Advocate
for Mr. S.K. Rana, Advocate for respondent No. 5.

Briefly stated the facts of the case are that on account of death of
Lalu @ Lallu Bhartiya in a road side accident which took place on 18.2.2016 at
about 8.20 P.M. in the area of turning of village Dehar, within jurisdiction of
Police Station Lalru, S.A.S. Nagar, Mohali statedly account of rash and
negligent driving of motor cycle bearing registration No. HR-05-X-9957 by
respondent No. 1 Chander Parkash, legal heirs of the deceased namely his wife
Smt. Balwanti, aged about 45 years, son Sh. Ram Tirath Bhartiya, aged about
26 years, minor daughter Ms. Nanki, aged about 16 years, married daughter
Smt. Meera Devi, aged about 26 years had brought a claim petition under
Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Chander
Parkash-driver and owner as well as National Insurance Company Ltd.,
Chandigarh-insurer of motor cycle bearing registration No. HR-05-X-9957

(hereinafter referred to as the offending vehicle) claiming compensation to the tune of Rs.75 lacs.

On being put to notice both the respondents appeared and filed written statements and contested the claim petition. Issues on merits were framed and parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the Motor Accidents Claims Tribunal, Chandigarh vide Award dated 26.10.2016 accepted the claim petition and awarded compensation of Rs.15,86,000/- to the claimants payable by both the respondents jointly and severally with interest at the rate of 7.5% per annum from the date of filing of the claim petition till actual realization. The amount was apportioned amongst the claimants as under :-

Claimant No. 1	= 50%
Claimant No. 2	= 15%
Claimant No. 3	= 25%
(minor daughter)	
Claimant No. 4	= 10%

The other details regarding mode of payment etc. are given in the Award. The Insurance Company felt aggrieved by the said Award and has approached this Court by way of filing an appeal, notice of which was given to the claimants-respondents who have put in appearance through counsel.

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

The Tribunal in view of the eyewitness account provided by PW2 Shekhar Bhartiya which was inconsonance with the case of the claimants and in light of copy of the post mortem report of the deceased Ex.P1, copy of F.I.R. Ex.P7 and considering the fact that respondent no. 1 is facing criminal trial for his rash and negligent driving came to the conclusion that the accident in

question had taken place due to rash and negligent driving of the offending motor cycle by respondent No. 1 Chander Parkash. The Tribunal has considered the fact that respondent No. 1 appearing as RW1 had deposed that no such accident had taken place but his version was discarded in view of the overwhelming evidence to the contrary adduced by the claimants. The finding is proper and appropriate and does not call for any interference. It being so, the claimants being legal heirs and legal representatives of the deceased are entitled to get compensation from respondent No. 1 being driver and owner and respondent No. 2 National Insurance Company Limited-insurer of the offending motor cycle, their liability being joint and several.

While assessing the quantum of compensation, the Tribunal has taken age of the deceased to be 43 years which has been rightly done in view of oral and documentary evidence brought on record. PW3 Satwinder Singh, Time Keeper, HR Department, Bhandari Export Industries Ltd., Mohali had stated that deceased was working as a Assistant Operator with their concern and drawing a salary of Rs.7540/-. He had proved the salary certificate Ex.P8. He has further stated that deceased used to work overtime and was earning Rs.3120/-. Considering the fact that the amount was for one month and not for the entire period and further that bonus @ 8.33% of the wages were also being paid took monthly income of the deceased to be Rs.9,000/- per month. Annual income was arrived at Rs.1,08,000/-. 1/3rd of the amount was deducted towards personal and living expenses of the deceased. The dependency of the claimants was arrived at Rs.72,000/- per annum. Multiplier of 14 was used considering the age of the deceased and total compensation was worked out to Rs.10,08,000/-. The Tribunal has added 30% amount towards future prospects.

However, in view of judgment '*National Insurance Company Limited Versus*

Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009' only 25% of the amount can be added. Doing that the total amount comes out to Rs.12,60,000/-. The tribunal has awarded compensation of Rs. 1 lac to claimant No. 1 being widow of the deceased on account of loss of consortium and Rs.50,000/- each to claimants No. 2 and 4. Claimant No. 3 was given Rs.1 lac towards loss of love and affection whereas Rs.25,000/- was given towards personal expenses. However, in terms of judgment '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** they are entitled to get Rs.70,000/- only. Therefore, the total compensation comes out to Rs.13,30,000/-. The Tribunal has awarded a sum of Rs.15,86,000/- which is on higher side. The same is reduced to Rs.13,30,000/- with interest at the rate of 7.5% per annum by way of acceptance of the appeal partly. The directions with regard to apportionment and mode of payment shall remain the same as given in the original Award. The excess amount, if paid be refunded otherwise the Insurance Company would be entitled to recover it by way of filing execution application before the Tribunal.

(H.S. MADAAN)
JUDGE

November 13, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No