

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

FAO-2932-2018(O&M)

Date of decision:-24.4.2019

National Insurance Company Ltd.

...Appellant

Versus

Smt.Sonia and others

...Respondents

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

Argued by: Mr.Sandeep Suri, Advocate
for the appellant.

Mr.Inderpal Goyat, Advocate
for respondents No.1 to 5.

Mr.Vinod Chaudhari, Advocate
for respondent No.8.

H.S. MADAAN, J.

On account of death of Ankur in a motor vehicular accident, which took place on 20.11.2011 at about 3:30 a.m. in the area in between village Sarsod – Bahabalpur, statedly on account of wrongful parking of truck having registration No.HR-39B-2592 in the middle of the road without flashing indicators and reflectors and without observing traffic rules by respondent No.1 – Hari Singh, legal representatives of deceased Ankur i.e. Smt.Sonia – wife, Master Rudarpartap – minor son, Baby Radhima – minor daughter, Smt.Bharti – mother and Sh.Dharambir - father, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Hari Singh – driver, Dalbir

Singh – owner and New India Insurance Company Ltd. - insurer of truck having registration No.HR-39B-2592 as well as Randeep – owner and driver of Swift car having registration No.HR-20V-5077 and National Insurance Co. Ltd. through its Manager - insurer of the said Swift car.

As per the case of the petitioners/claimants, the deceased was travelling in the abvoesaid Swift car when the car had hit the truck as a result thereof occupants of the Swift car namely Ankur besides Randeep and Virender had suffered multiple injuries; they were taken to General Hospital, Hisar; that Ankur had succumbed to the injuries; that post-mortem examination on his dead body was performed at General Hospital, Hisar; that an FIR No.432 dated 20.11.2011 for the offences under Sections 283, 337, 304-A IPC was also registered with Police Station Barwala.

Notice of the claim petition was given to the respondents, who put in appearance through counsel. The claim petition was contested by respondents No.1 to 3, whereas respondents No.4 and 5 had merely denied their liability to pay any compensation stating that the accident had taken place on account of fault of the truck driver. The respondents prayed for dismissal of the claim petition.

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

1. Whether the accident, resulting into the death of Ankur S/o Dharambir, had taken place due to the rash and negligent driving of vehicle, i.e. Truck bearing registration NO.HR-39B-2592 by respondent NO.1 and vehicle, i.e. Swift Car bearing registration

NO.HR-20V-577 by respondent no.4, as alleged? OPP.

2. If issue No.1 is proved in affirmative, whether the petitioners are entitled to claim any compensation, if so, to what amount and from whom? OPP.
3. Whether respondent NO.1 was not holding a valid and effective driving licence at the time of the alleged accident? If so, its effect? OPR-3.
4. Whether respondent NO.2 had contravened the terms and conditions of the insurance policy, as alleged? If so its effect? OPR-3.
5. Whether respondent no.4 was not holding a valid and effective driving licence at the time of the alleged accident? If so, its effect? OPR-5.
6. Whether respondent No.4 had contravened the terms and conditions of the insurance policy, as alleged? If so its effect? OPR-5.
7. Relief.

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

In support of their case, the claimant No.1 had got her statement recorded as PW1 besides examining Sh.Vinod Kumar as PW2, Sh.Subhash Chander, Superintendent, ADC, Jhajjar as PW3 and Sh.Virender Kumar as PW4.

On the other hand, respondents tendered into evidence certain documents.

After hearing arguments, the Tribunal while allowing the

petition vide award dated 11.1.2018 granted compensation of Rs.24,34,840/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. The manner in which the compensation is to be apportioned was also given in the award.

Such award left the National Insurance Company Ltd. aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

Notice of the appeal was issued to the respondents. Respondents No.1 to 5 and respondent No.8 put in appearance through counsel.

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

The first and foremost argument advanced by learned counsel for the appellant was that the Tribunal has wrongly come to the conclusion that it was a case of contributory negligence when it was established on the record that accident in question had happened solely due to wrongful parking of the truck in question by respondent No.1 – Hari Singh. Therefore, only respondents No.1 to 3 should have been saddled with the liability to pay compensation instead of apportioning it between respondents No.1 to 3 on one side and respondents No.4 and 5 on other side in equal shares.

Whereas learned counsel appearing for respondent No.8 vehemently contested the argument saying that the Tribunal has rightly come to the conclusion that driver of the Swift car was also at fault in happening of the mishap and no reason is there to upset that finding.

After hearing learned counsel for the parties and going through the record, I find that the Tribunal on appreciation of the evidence produced before it and considering the facts and circumstances of the case has correctly arrived at the inference that it was a case of contributory negligence and driver of Swift car in question was also at fault in happening of the accident. I do not find any reason to upset such conclusion arrived at by the Tribunal. Therefore, the argument of learned counsel for the appellant in that regard is rejected.

Coming to the second argument advanced by learned counsel for the appellant that in terms of judgment **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, the claimants were entitled to get Rs.70,000/- only under conventional heads, however, the Tribunal has awarded a sum of Rs.2,50,000/- on that account and the Award needs to be modified in that regard.

I find force in that contention. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The Tribunal has awarded an amount of Rs.1,00,000/- to Smt.Sonia as loss of consortium, Rs.1,00,000/- to petitioners No.2 and 3 towards love and affection; Rs.25,000/- as cost of litigation and Rs.25,000/- on account of transportation and funeral ceremony. While the amount of compensation awarded to the tune of Rs.21,84,840/- has been correctly arrived at after considering the age,

avocation and income of the deceased as well as number of dependents upon him. However, with regard to amount of Rs.2,25,000/- awarded under conventional heads and Rs.25,000/- as cost of litigation are on higher side. In addition to compensation of Rs.21,84,840/-, the claimants are entitled to get an additional amount of Rs.70,000/- under conventional heads, making total compensation payable to be Rs.22,54,840/- (21,84,840 + 70,000).

Accordingly, the appeal is accepted partly and compensation of Rs.22,54,840/- with interest at the rate of 7.5% is awarded to the claimants with proportionate costs as admissible under rules. The liability of respondents to pay this amount, the apportionment thereof and other terms and conditions will be the same as given in the original award.

24.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No