

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

FAO-82-2012(O&M)

Date of decision:-25.3.2019

New India Assurance Company Ltd.

...Appellant

Versus

Smt.Parmila and others

...Respondents

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

Present: Mr.Tarundeep Kumar, Legal Aid counsel with
Mr.Vinod Gupta, Advocate for the appellant.

Ms.Amandeep Kaur, Advocate
for respondents No.1 to 3.

Mr.Gaurav Saini, Legal Aid counsel
for respondent No.4.

H.S. MADAAN, J.

On account of death of one Ramphal in a motor vehicular accident, his legal representatives i.e. Smt.Parmila aged about 28 years – wife, Master Vikas aged 8 ½ years and Master Aveesh Kumar aged 5 ½ years had brought a claim petition under Section 163-A of the Motor Vehicles Act, 1988 against respondents i.e. Budha Lal owner and New India Assurance Company Ltd. – insurer of three-wheeler No.CH-03-K-2438 (hereinafter referred to as the ill-fated vehicle) claiming compensation to the tune of Rs.15 lacs.

As per the case of the petitioners/claimants, on 24.6.2003 at

about 4:15 p.m., Ramphal was driving the vehicle in question going on road leading from Tribune Chowk to Chowk of Sectors 29/30/31/32 and when he reached in front of CII Building, Sector 31, Chandigarh, the vehicle turned turtle, as a result Ramphal received multiple injuries; that he was immediately removed to PGI, Chandigarh but unfortunately he succumbed to the injuries there; that at that time, Ramphal was aged about 28 years and was in employment of respondent No.1 - Budha Lal; that he used to get salary of Rs.3,000/- per month; that on account of his death his widow and minor children have suffered a lot, therefore compensation of Rs.15 lacs along with interest be awarded to them.

On notice, both the respondents appeared and filed separate written statement.

In the written statement filed by respondent No.1 – Budha Lal, he had raised various legal objections challenging the maintainability of the claim petition, on merits contending that Ramphal (since dead) was not in his employment and as a matter of fact, he had taken away his three-wheeler without his permission in his absence while he has gone away to his native village. According to such respondent since Ramphal was plying the vehicle without his consent, he is not liable to pay any compensation to the claimants.

In the written statement submitted on behalf of the insurance company, it also raked up various legal objections submitting that Ramphal deceased was not holding valid and effective driving licence to drive the vehicle and that the accident, if any had taken place was due to carelessness and negligence of driver himself, therefore the insurance

company is not liable to pay any compensation.

Both the respondents prayed for dismissal of the claim petition.

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

1. Whether Ramphal died in a motor vehicular accident, which took place on the road leading from Tribune Chowk to the Chowk of Sectors 29/30 & 31/32 in front of CII Building, Sector 31, Chandigarh at about 4:15 PM on 24.6.2003 on account of use of three-wheeler bearing registration No.CH-03-K-2438? Opp.
2. If issue No.1 is proved, to what amount of compensation the claimants are entitled and from whom? OPP.
3. Whether Ramphal, since deceased was not holding a valid and effective driving licence at the time of accident? OPR3.
4. 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 tendering documents.

On the other hand, respondent No.1 got recorded his statement as RW1, besides tendering documents.

After hearing arguments, while allowing the petition vide award dated 30.8.2011, the Tribunal granted compensation of Rs.4,41,500/- along with interest @ 7.5% per annum from the date of filing of the petition till actual realization. The manner in which the

compensation is to be apportioned was also given in the award.

Such award left the Insurance Company 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, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I do not find any merit in the present appeal.

At the very outset, it may be mentioned here that the stand taken by respondent No.1 Budha Lal before the Tribunal was that the deceased had taken away his three-wheeler without his consent while he had gone to his native village, as such, he is not liable to pay any compensation. He had got his statement recorded as RW1 before the Tribunal repeating that version but the Tribunal did not believe his such contentions for the reason that he had admitted in his cross-examination that he had not reported the matter to police even if coming to know about factum of the accident and he had not brought any railway ticket regarding his journey from Chandigarh to his native place at that time. On the other hand, it was a specific case of the claimants that the deceased was in employment of Budha Lal – respondent No.1 and was earning Rs.3,000/- per month. The Tribunal on analysis of the evidence adduced before it found that income of the deceased so taken was not on higher side and took it as such. The Tribunal also come to the conclusion that death of Ramphal in the motor vehicular accident was established and for deciding a petition under Section 163-A of the Motor Vehicles Act, the aspect due

to whose negligence, the accident had taken place, was not required to be probed. The simple thing to be seen was as to whether death or permanent disablement of a victim had taken place due to accident arisen out of use of motor vehicle. The Tribunal had relied upon the testimony of PW1 Smt.Parmila coupled with contents of DDR No.42 dated 24.6.2003 (Ex.P3) and DDR No.14 dated 28.6.2003 (Ex.P2) recorded at Police Station Sector 31, Chandigarh for coming to the conclusion that Ramphal had suffered injuries in a motor vehicular accident, to which he had succumbed. The insurance company does not dispute that the auto rickshaw three-wheeler in question was insured with it at the relevant time. Even otherwise, the insurance policy Ex.R1, which is a package policy proved on the file, shows that this vehicle belong to respondent No.1 and was insured with respondent No.2 – insurance company at the relevant time. Since it was a package policy, the claim of the driver was covered as well. Though the insurance company had taken up a plea that the deceased was not holding a valid and effective driving licence at the relevant time and since he was not authorized by respondent No.1 to drive the three-wheeler, therefore the deceased could not be treated as third party and insurance company was not liable, however, the Tribunal did not accept those contentions of the insurance company contending that the onus of proving that the deceased was not holding a valid and effective driving licence at the time of accident was upon such insurance company and it had failed to discharge the onus by bringing enough cogent and convincing evidence and further the insurance company could not draw any advantage of PW1 Parmila stating that her husband Ramphal was

having a valid driving licence without placing a copy thereof on record. The Tribunal had taken up the monthly income of deceased to be Rs.3,000/- considering that the labour could easily earn that amount; keeping in view his age as 28 years at the time of death and deducting 1/3rd of the amount towards personal expenses, determined the dependency of the claimants to be Rs.2,000/- per month, annual dependency Rs.24,000/- (2,000 x 12) and in view of second schedule under Section 163-A adopted multiplier of 18, working out the compensation to Rs.4,32,000/-, to which funeral expenses of Rs.2,000/-, Rs.5,000/- on account of compensation for loss of consortium and Rs.2,500/- towards loss of estate were added, making total amount of compensation payable to be Rs.4,41,500/- and interest at the rate of 7.5% was granted on that amount besides cost of the claim petition.

The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

Finding no merit in the appeal, the same stands dismissed accordingly.

25.3.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No