IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5515-2018(O&M)
Date of decision:-15.3.2019

The Oriental Insurance Company Ltd.

...Appellant

Versus

Kulwinder Singh and others

...Respondents

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

Present: Mr.Ram Avtar, Advocate
for the appellant.

Mr.Ashwani Arora, Advocate
for respondents No.1 to 3.

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H.S. MADAAN, J.

Mr.Kulwinder Singh, aged about 32 years, Jaswinder Singh, aged about 30 years - sons and Ms.Ranjit Kaur, aged about 28 years, married daughter of Sh.Chand Singh, who lost his life in a motor vehicular accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Raj Kumar – driver, Luxmi Narayan – owner and Oriental Insurance Co. Ltd.- insurer of truck having registration No.HP12-H-1290 (hereinafter referred to as the offending truck) claiming compensation to the tune of Rs.40 lacs.

As per the case of the petitioners/claimants, on 19.10.2016 Sh.Chand Singh along with his wife Smt.Shakuntla was returning home from village Issarnagar, District Panchkula on a motorcycle, which was being driven by him (Sh.Chand Singh) on which Smt.Shakuntla was pillion riding; that the motorcycle was being driven at a slow speed on the left side of the road; that one Jaswinder Singh was following them on a separate motorcycle; that at about 4:15 p.m. when they had crossed Chandimandir Light Points, then the offending vehicle being driven by respondent No.1 – Raj Kumar at a fast speed in a rash and negligent manner struck against their motorcycle, as a result both the riders, namely, Sh.Chand Singh and Smt.Shakuntla fell down on the road; that Smt.Shakuntla Devi was run over by tyre of the offending truck; that Sh.Chand Singh and Smt.Shakuntla Devi had suffered multiple serious injuries; that Smt.Shakuntla Devi had succumbed to the injuries at the spot, however, both of them were taken to General Hospital, Sector 6, Panchkula; that Sh.Chand Singh was referred to PGI, Chandigarh from where he was referred to GMSH, Sector 16, Chandigarh on 28.10.2016, however keeping in view his serious condition, he was referred back to PGI, Chandigarh on the same day; that he was discharged from PGI, Chandigarh on 31.10.2016 and was taken home but due to his serious condition, he was again taken to PGI, Chandigarh on 2.11.2016, where the doctors on duty declared him brought dead; that as a matter of fact, the deceased Sh.Chand Singh had died as a result of suffering injuries in the accident; that the post-mortem examination was conducted on the deadbody of deceased Sh.Chand Singh and Smt.Shakuntla Devi; that formal FIR regarding the accident was recorded at Police Station Chandimandir, District Panchkula vide FIR No.267 dated 19.10.2016 for the offences under Sections 279, 304-A and 337 IPC. As per the claimants, deceased Sh.Chand Singh was running a tyre repair shop in village Jayantimajra, Tehsil Kharar, District Mohali and was earning Rs.20,000/- per month.

Notice of the claim petition was given to the respondents, who put in appearance. Respondents No.1 and 2 had filed a joint written statements whereas respondent No.3 came up with a separate written statement. In the joint written statement filed on behalf of respondents No.1 and 2, they took several preliminary objections contending that the claim petition was not maintainable and the claimants had not approached the Court with clean hands. On merits, they denied the material assertions in the claim petition stating that a wrong FIR had been got registered against respondent No.1 involving the truck in question; further contending that respondent No.1 was having a valid driving licence and the vehicle in question was insured with respondent No.3.

In the written reply filed by respondent No.3, it took up the plea that the claimants had filed the claim petition in collusion with respondents No.1 and 2 to extract illegal compensation from answering respondent and liability of insurance company would arise only if driver of the offending vehicle was holding a valid and effective driving license at the time of accident and the vehicle was being driven as per the provisions of the Motor Vehicles Act.

All the respondents prayed for dismissal of the claim petition.

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

1. Whether Chand Singh has died in a road side accident due to rash

and negligent driving of Truck bearing registration No.HP12-H-1290 by respondent No.1? OPP.

2. Whether the claimants are entitled to compensation, if so to what amount and from whom? OPP.
3. Whether respondent No.1 was not having a valid and effective driving license at the time of accident? OPR-3.
4. Relief.

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

In support of their case, the claimant No.2 Jaswinder Singh got his statement recorded as PW1 besides examining Dr.Sunil Gambhir, Senior Medical Officer, Forensic Expert, Civil Hospital, Panchkula as PW2, Sh.Naveen Sharma, Medical Record Technician, PGI, Chandigarh as PW3. The claimants had also tendered some documents in evidence.

On the other hand, respondents have tendered in evidence copy of driving license of respondent No.1 as Ex.R1, copy of registration certificate as Ex.R2, copy of national permit as Ex.R3, copy of insurance policy as Ex.R4.

After hearing arguments, the Tribunal decided issue No.1 in favour of claimants and against the respondents, issue No.2 in favour of the claimants and against the respondents, issue No.3 in favour of respondent No.1 and against respondent No.3. Resultantly while allowing the petition vide award dated 14.3.2018, the Tribunal granted compensation of Rs.6,32,536/- along with interest @ 7.5% per annum from the date of filing of the petition till realization payable by all the three respondents jointly and severally. 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. Respondents No.1 to 3 put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the appeal is without any merit.

The Tribunal considering the age of deceased to be 58 years and his occupation as tyre repair mechanic, had taken his monthly income to be Rs.7,175 in view of notification of Punjab Government regarding minimum wages of unskilled labourer with effect from 1.9.2016, and allowing 10% addition to the income towards future prospects took the monthly income to be Rs.7,892/- and deducted 1/3rd of the amount towards personal expenses of deceased, rejecting the plea that since two sons of the deceased were major and his daughter was married, 50% of the amount should be deducted towards personal expenses.

The findings given by the Tribunal are being reproduced as under:

> "30. However, the Hon'ble High Court of Punjab and Haryana while declining FAO No.2879 of 2013 titled **Shri Ram General Insurance Company Ltd. Vs. Veena Chadha and others**; and FAO No.3203 of 2013 titled **Smt.Veena Chadha and another Vs. Karnail Singh and**

others, was pleased to quote for approval the decision in FAO No.5452 of 2012, decided on 2.8.2013, titled as The **New India Assurance Company Ltd. Vs. Kuldeep Singh and others**, wherein it was held as follows:-

"Even if a son is major and is earning, he does not stop looking to his father for financial help. It is not a case where the sons were drawing the salary and that he could not look to their father, who was getting petty amount. Sons even if they are major do not lose the status of legal representatives about which there is reference in Section 166(1)(c) of the Act. Therefore, the major sons can maintain a claim petition for compensation on the death of their father."

Similarly, its earlier decision by the Hon'ble High Court of Punjab and Haryana in FAO No.1772 of 2013, decided on 9.4.2013, titled as New India Assurance Company ltd. Vs. Pushpinder Kaur and others, wherein it was held as follows:-

"4. Admittedly, the deceased had left behind not only his wife, but also his 3 major sons in the age group of 33-37. It is highly improbable that sons would not have shared anything from the income of the deceased along with their mother. As the deceased had left behind his three sons also apart from his wife, in my view the Tribunal has rightly deducted 1/3rd of the income from the income of the deceased."

And it was held that in similar cases the deduction from the income of the deceased was to be taken as 1/3rd for personal expenses. Therefore, in the case in hand also on the basis of aforesaid rulings, 1/3rd income is to be deducted for personal expenses. The Annual income of deceased comes to Rs.94,700/- minus Rs.31,566/- = Rs.63,134/-."

Since it is case of the claimants that the deceased along with his wife, who too had perished in the accident along with their sons, the claimants, had been residing together and deceased was making contribution from his income towards household expenses, it cannot be said that the sons of the deceased are not entitled to get any compensation for the reason that they had not suffered any pecuniary loss on account of death of their father in the accident.

As regards the authority referred to by learned counsel for the appellant i.e. ***New India Assurance Co. Ltd. Versus Vinish Jain and Ors., 2018(1) PLR 759*** by the Apex Court, it had different facts where the deceased was aged about 78 years and his major sons were not dependent upon him and further two granddaughters were primarily dependent on their father and not on their grandfather and for that reason, 50% of the amount was deducted towards personal expenses. Whereas it is not so in the present case as the age of the deceased was 58 years and he was running a tyre repair shop and used to reside with his wife and sons in a joint family. Therefore, this authority does not help the appellant in any manner.

The Tribunal after deducting 1/3rd of the monthly income has found the annual dependency of the claimants to be Rs.63,134/- per annum and using multiplier of 9 and adding the amounts spent on medical treatment of Sh.Chand Singh, besides awarding amount of Rs.15,000/- towards funeral expenses and Rs.15,000/- on account of loss of estate, had awarded compensation of Rs.6,32,536/- to the claimants. The amount so arrived at is just and adequate and can certainly be not termed to be on higher side.

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.

15.3.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No