

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

1. FAO-1051-2020 (O&M)
Date of decision : 17.02.2020

New India Assurance Company Limited

...Appellant

Versus

Savita Devi and others

...Respondents

2. FAO-1298-2020 (O&M)
Date of decision : 17.02.2020

Savita Devi and others

...Appellants

Versus

Deepak Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Talwar, Advocate for the appellant.
(In FAO-1051-2020)
for respondent No.3 (In FAO-1298-2020)

Mr. Sandeep Singh, Advocate for respondent Nos.1 to 6.
(In FAO-1051-2020)
for the appellants (In FAO-1298-2020).

ANIL KSHETARPAL, J. (ORAL)

CM-2636-CII-2020 in FAO-1051-2020

For the reasons stated in the application, which is duly

supported by an affidavit, delay of 26 days in filing the present appeal is condoned.

Application is allowed.

CM-3553-CII-2020 in FAO-1298-2020

For the reasons stated in the application, which is duly supported by an affidavit, delay of 42 days in filing the present appeal is condoned.

Application is allowed.

Main cases

By this order, two appeals bearing FAO-1051-2020 and FAO-1298-2020 filed by the Insurance Company as well as claimants against a common judgment of the Tribunal shall stand disposed of.

On account of death of late Sh. Satish Kumar in a motor vehicular accident, a claim petition was filed under Sections 166/140 of the Motor Vehicles Act, 1988 by widow, three minor children and aged parents.

Learned Motor Accident Claims Tribunal, has found that the offending car was being driven rashly and negligently. Learned Motor Accident Claims Tribunal has relied upon the statement of Ishwar Singh, eye-witness who deposed in the Court as PW2. The Tribunal assessed the compensation payable at ₹20,95,000/- alongwith interest at the rate of 9% per annum from the date of filing of the petition till realisation.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgment passed by the

Tribunal.

Learned counsel for the appellant has submitted that since it is a case of the claimants that the deceased was standing behind the parked truck on the National Highway and it is undisputed that the offending car did not hit the parked truck, therefore, it must be assumed that it was a case of contributory negligence. He further submitted that the Motor Accident Claims Tribunal has assessed the income of the deceased at ₹12,000/- per month without any documentary evidence. While elaborating, he submitted that the minimum wages in State of Haryana on the relevant date were much less.

On the other hand, learned counsel for the respondents-claimants, who have also filed the other appeal, has submitted that the Insurance Company or the respondents in the claim petition, did not lead any evidence. He further drew attention of the Court to the evidence of Ishwar Singh to contend that in spite of opportunity given, deposition of Ishwar Singh to the effect that the offending car was being driven rashly and negligently, could not be impeached by the learned counsels for the opposite parties. He further submitted that tyre of the truck got punctured. Late Sh. Satish Kumar, alongwith his brother Ishwar Singh got down from the truck and were in the process of replacing the punctured tyre when the accident took place. He further submitted that the truck was parked towards extreme left hand side. Major part of the body of the truck was on the *katcha* road i.e. berm.

On analysis of the arguments of learned counsel for the

parties, this Court finds no ground to interfere.

No doubt, the offending car had come from behind and while knocking down late Sh. Satish Kumar did not hit the parked truck. However, that itself is not sufficient to conclude that the deceased was also negligent particularly when the statement of Ishwar Singh, the alleged eye-witness is categoric. The respondents, in the claim petition before the Tribunal, have not led any evidence. It is not necessary that if a car comes from behind and knocked down someone who is standing behind the truck, must smash into the parked truck. A lay out plan produced on file prove that the major portion of the body of the truck was already on the *katcha* road i.e. berm and the accident took place on extreme left side of the road. National Highway is wide enough to accommodate three parallel vehicles. In such circumstances, this Court does not find any substance in the first argument of learned counsel for the Insurance Company.

As regards next submission of learned counsel with respect to minimum wages, it may be noted that it has come in evidence from the statement of Ishwar Singh as well as widow of the deceased that the deceased was working as a Scrap Dealer. He was aged about 40 years. He at the relevant time was resident of District Kaithal, Haryana. The accident took place on 28.08.2018. In this part of the country, a unskilled construction labourer charges more than ₹400/- per day.

Keeping in view the aforesaid facts, it would not be appropriate to interfere in the assessment of income by the Motor

Accident Claims Tribunal.

Learned counsel for the claimants has submitted that the Motor Accident Claims Tribunal has erred in granting ₹40,000/- for loss of consortium only. He submitted that loss of consortium should have been granted to each of the claimant. He relies upon the judgment passed by Hon'ble the Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130.**

At this stage, it may be relevant to note that the Constitution Bench of Hon'ble the Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017(10) SC 450,** has held that maximum amount for loss of consortium which can be awarded, is ₹40,000/-.

In view of the declaration of the Constitution Bench in the case of National Insurance Company Ltd. (Supra), this Court does not find any good ground to interfere.

Hence, both the appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

17.02.2020

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**