

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

FAO No.1266 of 2018 (O&M)
Date of decision: 21st January, 2020

National Insurance Co. Ltd.

... Appellant

Versus

Sat Narayan & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Bhupinder Kaur, Advocate for
Mr. Suman Jain, Advocate for the appellants.
None for the respondents.

FATEH DEEP SINGH, J.

The insurance company, appellant National Insurance Company Limited (in short, 'the insurer') has come up in this appeal against the award dated 26.10.2017 passed by the learned Motor Accident Claims Tribunal, Kaithal whereby on the claim of unfortunate claimants/parents, Sat Narayan (father) and Krishna Devi (mother), the Tribunal has awarded a sum of ₹ 14,19,400/- with interest at the rate of 9% per annum from the date of filing of the claim petition till realization of the amount.

Upon hearing Ms. Bhupinder Kaur, Advocate on behalf of Mr. Suman Jain, Advocate for the appellants and perusal of the records.

The deceased Anil Kumar, who happens to be son of the unfortunate claimants, was a driver on truck bearing registration No.HR-

56-A-3590. It was around 7:00 p.m. on 07.04.2015 they unloaded the goods and had gone to sleep. On the early morning of 08.04.2015 around 6:00 a.m. hearing loud sound complainant Vikram, colleague of the deceased, came out and saw that the deceased had been run-over by another truck bearing registration No.HR-56-A-3595 (in short, 'the offending truck') being driven rashly and negligently by Balkar Singh and which truck was owned by Vijay Kumar Garg and insured with the appellant insurer. FIR No.40 dated 08.04.2015 under Sections 279 and 304-A IPC (Ex.PA) was registered with Police Station Alandi, District Pune (Maharashtra). The claimants claim that the deceased was aged around 33 years, a bachelor and upon which the claimants were totally dependent and have claimed that the deceased was earning around ₹15,000/- per month from his profession. The driver and owner of the offending truck denied the accident and their liability while the insurer claimed that a false FIR was got registered in collusion with the police and denied their liability to pay the compensation. The learned Tribunal framed following issues:-

1. Whether the accident dated 8.4.2015 resulting in death of Anil Kumar son of Sat Narayan occurred on account of rash and negligent driving of truck No.HR-56A-3595 by respondent No.1? OPP
2. Whether the claimants are entitled to compensation, if so to what extent and from whom? OPP

3. Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance policy, if so its effect? OPR
4. Relief.

The claimants examined Sat Narayan as PW-1, eye-witness of the accident Vikram as PW-2 and proved documents Ex.PA to Ex.PJ. On the other hand, respondents tendered the driving license of respondent No.1 as Ex.R1 and owner of the truck testified as RW-1 and proved RC of the truck Ex.R2, route permit Ex.R3 and Ex.R4, fitness certificate Ex.R5, insurance cover Ex.R6, verification report of the driving license Ex.R7 and closed his evidence. On the other hand, insurer examined verification reports Ex.R8 and Ex.R9, copy of the insurance policy Ex.R10. The claimants tendered copy of challan Ex.PK. Consequent thereto, the impugned findings were returned by the learned Tribunal.

Learned counsel for the appellant insurer has led two-pronged attack on the impugned award. Firstly, on the grounds that no such accident has ever taken place and a false FIR has been got registered in collusion with the police and secondly, over the quantum of compensation so awarded.

Appreciating the submissions, the factum of registration of a criminal case arising out of this accident by way of FIR Ex.PA and report under Section 173 Cr.P.C. Ex.PK have been duly proved on the record.

Learned counsel for the appellant could not in any manner displace the allegations and averments made therein. As has been concluded by the learned Tribunal, the allegations contained in these documents of the investigating agency are illustrative of the rash and negligent act of the driver of the offending truck. This Court seeks support from '**Mangla Ram vs. The Oriental Insurance Co. Ltd. and others**' AIR 2018 SC 1900, wherein their Lordships have made following observations:-

*“19. In **Dulcina Fernandes** (supra), this Court examined similar situation where the evidence of claimant's eye witness was discarded by the Tribunal and that the respondent in that case was acquitted in the criminal case concerning the accident. This Court, however, opined that it cannot be overlooked that upon investigation of the case registered against the respondent, prima facie, materials showing negligence were found to put him on trial. The Court restated the settled principle that the evidence of the claimants ought to be examined by the Tribunal on the touchstone of preponderance of probability and certainly the standard of proof beyond reasonable doubt could not have been applied as noted in **Bimla Devi** (supra). In paragraphs 8 & 9, of the reported decision, the dictum in **United India Insurance Co. Ltd. Vs. Shila Datta** MANU/SC/1256/2011 : (2011)10 SCC 509, has been adverted to as under:*

*‘8. In **United India Insurance Co. Ltd. v. Shila Datta** while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three Judge*

Bench of this Court has culled out certain propositions of which Propositions (ii), (v) and (vi) would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow: (SCC p. 518, para 10)

‘10. (ii) The rules of the pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

** * **

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. ...

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry.’

9. The following further observation available in para 10 of the Report would require specific note: (Shila Datta case, SCC p. 519)

10. ... We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of

compensation on the occurrence of an accident, after due enquiry, in accordance with the statute.'

*In paragraph 10 of the reported decision [**Dulcinea Fernandes and Ors.** (supra)], the Court opined that non examination of witness per se cannot be treated as fatal to the claim set up before the Tribunal. In other words, the approach of the Tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability."*

Therefore, the claim of the appellant side that no such accident has ever taken place stands negated and falsified and which is precisely the observation that has been arrived at by the learned Tribunal.

Learned counsel for the appellant fairly concedes that the claim of the claimants as PW-1 that the deceased was aged around 33 years needs to be considered in the light of absence of any evidence to controvert the same. It is also not displaced on the record the claim of the respondent side that the deceased was working as a truck driver and keeping in view his admitted avocation being of intrastate transport vehicle, a truck, is itself suggestive that getting a salary of ₹ 15,000/- per month cannot be displaced and rather appears to be plausible and justified. Though much fanfare has been sought to be raised over the very lack of evidence of his employment, but the police record and the medical records Ex.PA to Ex.PJ are suggestive of the fact that the deceased was employed as a driver, which in fact falls under the category

of 'skilled labourer'. Keeping in view that it is a welfare statute for the betterment of the claimants where stricter principles of evidence and law are not applicable and therefore, at the time of accident such emoluments in the year 2015 cannot be considered to be on the higher side and rather are fully justified. The learned Tribunal has rather misconstrued by holding that the Tribunal was not satisfied with the earning capacity of the deceased to be ₹ 15,000/- per month and has considered him to be an 'unskilled labourer' and by virtue of Haryana Government notification considered the wages to be ₹ 7,600/- per month and therefore, the annual income was taken to be ₹ 91,200/- which is highly unjustified and uncalled for. This Court certainly is of the view that in the light of this avocation, this salary is wholly justified and needs to be accepted on the face of it. Since the deceased has died in an accident involving motor vehicles under motion and therefore, the Tribunal certainly had the jurisdiction to entertain, try and decide the present matter and the provisions of Motor Vehicles Act, 1988 (as amended up to date) were applicable and the documents Ex.PA to Ex.PJ are illustrative to that effect. Even learned counsel for the appellant could not refute this consistent and substantial stand taken by the claimants in their claim petition and evidence. Moreover, the registration of FIR certainly clears all the doubts that are sought to be raised over this issue of avocation and case of death of the deceased and there is not even a semblance of evidence to rebut the same.

The deceased was a bachelor aged around 33 years. The claimants are parents of the deceased. Learned counsel for the appellant could not show that there was any other family member on which the claimants could depend for their support. Had the deceased been alive, he would have certainly spent some amount on his own upkeep and luxuries of life commensurate with his status and which has certainly escaped judicial scrutiny by the learned Tribunal.

The Tribunal has rightly applied multiplier of 16 and the expenses on his own upkeep and maintenance in view of the number of members dependent should be $\frac{1}{3}$ instead of $\frac{1}{2}$. It cannot be lost sight of the fact that the aged parents have lost their young son and thus, some compensation ought to have been awarded under the head of 'physical and mental agony', 'loss of dependency' and 'loss of love, affection and companionship' and which certainly are matters of much significance in such an unfortunate situation for the aged parents. So in view of all these considerations, keeping in mind that assessment of compensation is based more on hypothetical calculations and cannot be equated with precise mathematical propositions and calculations, and overall grant of compensation to the tune of ₹ 14,19,400/- does not appear to be in any manner unjustified and illegal and rather is highly equitable and justified in such a situation besides the fact that the award of interest at the rate of 9% per annum from the date of filing of the claim petition till realization of the amount too is totally legal and valid. Learned counsel for the

appellant could not convince this Court how the overall compensation so awarded can be termed to be illegal and unjustified necessitating intervention by this Court. The award is in no manner wrong appreciation of the evidence and the law, and therefore, does not call for any interference. The appeal being hopelessly without merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

January 21, 2020
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No