IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 36 of 2021 (O&M)
Date of Decision: January 25, 2021

NATIONAL INSURANCE COMPANY LTD.

...... Appellants(s)

Versus

RUPINDER KAUR AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. V. Ramswaroop, Advocate for the appellant.

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LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

Appellant-insurance company is aggrieved of award dated 20.12.2019, passed by learned Motor Accident Claims Tribunal, SAS Nagar, Mohali (hereinafter referred to as 'the Tribunal).

Brief facts necessary for adjudication of the case are that claimants i.e. respondents no.1 to 3 in this appeal, preferred a petition petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of death of Gurdarshan Singh i.e. husband of respondent no.1 and father of respondents no.2 and 3. It is pleaded that on 15.06.2018 Gurdarshan Singh (deceased) was proceeding at about 6:00 P.M.

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on a motorcycle of his friend Naranjan Singh from PCL Chowk, Mohali towards Phase 4, Mohali. Gurdarshan Singh was pillion rider of the motorcycle bearing registration no.PB-65N-8541, which was being driven by Naranjan Singh. When they reached near traffic lights/intersection of Phase 3-5, Mohali, a car bearing registration No.PB-65-AM-4033, being driven by respondent-Harkeet Singh in a rash and negligent manner, came from behind and hit the motorcycle at its back. As a result thereof Gurdarshan Singh received head injuries. Naranjan Singh sustained injuries as well. They were both taken to Cheema Hospital, Mohali by Gurmukh Singh. Gurdarshan Singh was thereafter, referred to PGI, Chandigarh. He was operated upon and discharged on 17.06.2018. However, on 07.08.2018 Gurdarshan Singh again fell seriously ill and he was taken to Cheema Hospital, Mohali but he ultimately succumbed to his injuries on 06.09.2018. Deceased was claimed to be 49 years old, an agriculturist as well as running business of dairy farm with an income of Rs.6 lakhs per annum. Compensation was thus prayed. An FIR No.158 dated 23.08.2018 was registered. Petition was resisted by both the insurance company as well as the owner/driver.

Following issues were framed by learned MACT, SAS Nagar, Mohali:-

1. Whether Gurdarshan Singh had died on account of injuries sustained by him in a motor vehicular accident which took place on 15.06.2018 at about 06:00 PM, near lights of Phases 3-5, Mohali due to rash and negligent driving of car bearing registration no. PB-65-AM-4033, by respondent no.2? OPP

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2. If issue No.1 is proved, whether the claimants are entitled to the compensation, if so, to what extent and from whom? OPP

3. Whether the petition is not maintainable? OPR

4. Whether respondent no.2 was not holding valid and effective driving licence at the time of accident? OPR-1

5. Whether the claimants are estopped by their own act and conduct to file the claim petition? OPR

6. Whether the claimants have no locus-standi to file the present claim petition.

7. Relief.

Learned Tribunal on considering the facts and evidence on record concluded that the accident in question in which Gurdarshan Singh and Naranjan Singh received injuries, took place due to the rash and negligent driving of respondent Harkeet Singh and that Gurdarshan Singh lost his life on 06.9.2018 due to the injuries received by him in the said accident.

Learned Tribunal vide impugned award dated 20.12.2019, awarded a sum of Rs.21,73,700/- as compensation to the claimants. Deceased was accepted to be 49 years old, earning a sum of Rs.10,000/- per month. Details of the compensation awarded are as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income	10,000 per month
2.	Income after addition of 25% on account of future prospects.	10,000 + 2500 = 12,500/-
3.	Income after deducting 1/3rd as personal living expenses of the deceased	12500 – 4666 = 7,834/-

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4.	Dependency after applying multiplier of 13 on annual income	7,834 x 12 x 13 = 12,22,104/-
5.	Loss of estate	15,000/-
6.	Loss of consortium to wife	40,000/-
7.	Funeral expenses	15,000/-
8.	Medical expenses	Rs.8,81,519/-
	Total	**Rs.21,73,623/- (rounded off to 21,73,700/-)**

Learned Tribunal held the present appellant alongwith respondent Harkeet Singh, to be jointly and severally liable to pay the compensation. Appellant is the insurance company. Respondent Harkeet Singh is the driver/owner of the offending vehicle. Aggrieved from the above said award and particularly with the liability imposed upon appellant-insurance company, this appeal has been filed.

Learned counsel argues that learned MACT, Mohali has wrongly foisted liability upon the appellant-insurance company. It is submitted that evidence led by the claimants does not prove that vehicle in question i.e. car bearing registration no. PB-65-AM-4033 was in fact involved in the accident at all. The owner/driver of the car in his written statement has denied occurrence of the accident. Moreover, there is an unexplained delay in lodging of FIR, which itself impinges upon its veracity. Reason given for delay in lodging of FIR is that father of deceased had gone to Australia and FIR was registered after his return. It is submitted that as per the record, he had returned on 17.06.2018 but still FIR was registered on

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23.08.2018. In this view of the matter, learned MACT, it is submitted, has grossly erred in law and on facts in holding the appellant liable to pay the amount of compensation and indemnify the owner of the offending vehicle. No serious argument has been raised on the quantum of compensation. It is thus prayed that this appeal be allowed and insurance company be completely exonerated from the liability to pay the amount of compensation to the claimants.

I have heard learned counsel for the appellant and have gone through photocopy of the part of record, circulated by learned counsel for the appellant, on the WhatsApp group, created for the purpose of video conference.

Firstly, it is relevant to refer to the evidence of PW-4 Dial Singh @ Hardial Singh i.e., the father of the deceased. It is specifically stated by PW-4 Dial Singh that he came back to India on 17.06.2018, on receiving news of accident and injuries sustained by his son, Gurdarshan Singh and that he immediately contacted the local police for taking action and registration of FIR in this respect. However, the police authorities at Police Station, Phase 1 Mohali kept putting off the matter due to pressure exerted by respondent-owner, who was the BDPO at Block Khera, District Fatehgarh Sahib. It is further categorically stated that respondent/owner was being helped by ADC, SBS Nagar, Nawan Shahar, who was posted as Secretary, Zila Parishad at Fatehgarh Sahib when the accident took place. It is relevant to note that nothing in favour of the insurance company could be elicited from cross-

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examination of said witness. In fact, a perusal of the same reveals that no such question regarding the averments of influence exerted by the respondent-owner, in his examination-in-chief are directed at PW-4. Therefore, to say that there is merely an unexplained simple statement of Dial Singh @ Hardial Singh regarding delay in lodging of FIR is not tenable. Delay in lodging of FIR stands explained satisfactorily.

The LAMA summary of the Cheema Medical Complex (Ex.P-171) reveals the history of patient Gurdarshan Singh as under:-

> *"Patient presented in our hospital with Alleged H/O-RTA while he was going on bike. Suddenly hit with open door of car leading to injury on left parietal region(head)*
> *T.O.I – 06:15PM*
> *P.O.I – 3/5 phase Lights(Mohali)*
> *D.O.I – 15.06.18"*

In regard to the course in the hospital it is specifically mentioned that the patient was intubated on Emergency basis and all basic life support aid was given to the patient and that line of treatment was explained to the patient's attendants, who sought to leave the hospital. It is a matter of record that Gurdarshan Singh was then brought to PGI and operated upon for compound fracture of left parietal bone with left parietal contusion. He was tracheostomized and discharged on 17.06.2018 with advise to attend OPD facility after three weeks. However, he had to be admitted to PGI on 30.06.2018 and ultimately discharged after about a month on 04.08.2018. Gurdarshan Singh was again admitted at Cheema Hospital after two days on

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07.08.2018 with complaint of left FTP DHC + LD (craniotomy), pneumonia, sepsis and dyselectrolytemia, but he ultimately succumbed to his injuries on 06.09.2018. Postmortem report is Ex.P-176 and cause of death is stated to be pneumonia with septicaemia and complications of head injury due to road side accident. In the given factual matrix, it is duly proved on record that Gurdarshan died due to injuries received by him in the motor accident, which occurred on 15.06.2018 due to the rash and negligent driving of the offending vehicle bearing registration no. PB-65-AM-4033. It is pertinent to note that FIR against owner-cum-driver of offending vehicle was admittedly lodged. Alleged delay in lodging the FIR is duly explained. It is further a matter of record that owner-cum-driver of offending vehicle did not step into the witness box, though occurrence of the accident has been denied in the written statement filed by him. In this view of the matter, I am not persuaded to interfere in the findings recorded by learned MACT, Mohali on a correct and proper appreciation of the evidence on record.

Thus in the given facts and circumstances, finding of learned Tribunal on issued no.1, cannot be faulted. It is a settled position that in proceedings under the Motor Vehicles Act, 1988, burden of proof is not of proving the case beyond reasonable doubt but the claimants are under a duty to prove their case on the touchstone of preponderance of probabilities. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in ***Mangla Ram Vs. Oriental Insurance Co. Ltd. and others 2018 AIR (SC) 1900***.

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Keeping in view the facts and circumstances of the case, appellant-insurance company cannot be exonerated of liability to compensate the claimants. Learned Tribunal has rightly held that the offending vehicle was duly insured with the appellant-insurance company at the time of the accident. Furthermore, learned counsel for the appellant is unable to point out any irregularity, or discrepancy in the amount of compensation awarded in view of the judgments of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017(16) SCC 680**,** Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333 and Anita Sharma and others Vs. The New India Assurance Co. Ltd. and another 2021(1) ALT 1.

There is a delay of 302 days in filing of this appeal. As the same has been adjudicated upon on merits, decision on the application for condonation of delay is rendered academic. Application is disposed of accordingly.

Appeal is accordingly dismissed with no order as to costs.

(LISA GILL)
JUDGE

January 25, 2021
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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