

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(126)

FAO No.507 of 2021 (O&M) &
CM-5129-CII of 2021
Date of decision: 01.07.2021

National Insurance Co. Ltd

...Appellant

Versus

Sona Rani and others

...Respondents

(Through video conferencing)

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Lalit Garg, Advocate for the appellant.

* * *

Harsimran Singh Sethi, J. (Oral)

The present appeal has been filed challenging the Award dated 23.02.2021 passed by the Motor Accident Claims Tribunal, Rupnagar, by which the claimants have been held entitled for compensation to the tune of Rs.25,50,000/- along with interest @ 7% per annum.

Learned counsel appearing for the appellant argues that the award passed by the Tribunal is erroneous on two accounts. The first argument raised by the learned counsel for the appellant is that the accident occurred at about 05.15 a.m. and it has been mentioned in the award that it was pitch dark, which fact cannot be believed as the accident occurred during summer and in the summer by 05.15 a.m. the sun usually rises, there has to be enough daylight for the deceased to see whether there is any disruption on the road or not. Learned counsel for the appellant submits that

even if, the offending truck was parked on the road, the deceased Jatinder

Kumar, who was driving the Bolero should have been careful enough to see the offending truck and should not have struck his vehicle with the said stationary offending vehicle.

On being asked, as to whether, any proof has come on record that on the date of accident at 05.15 a.m, there was enough daylight or it was a cloudy day, learned counsel for the appellant submits that as the truck driver did not appear before the Tribunal, the said argument is being raised only on the basis of presumption.

The argument cannot be raised on the basis of presumption but, should be raised on the basis of facts on record. Nothing has been produced before the Tribunal to project that it was not pitch dark at 05.15 a.m. on the fateful day. The said argument of the learned counsel for the appellant cannot be accepted on the ground that the same is not based upon facts on record but is based upon the presumption of the appellant. Therefore, the findings of facts, which are being sought to be overturned and that too on the basis of presumption cannot be accepted and are accordingly rejected.

Learned counsel for the appellant further argued that income of the deceased has not been assessed properly. Learned counsel for the appellant submits that there was nothing on record to show that the deceased could have earned Rs.20,000/-per month, which income has been assessed by the tribunal to compute the compensation.

In the award passed by the Tribunal, it has come on record that the deceased was doing wholesale business of vegetables and fruits and on the fateful day also he was bringing the vegetables and fruits from the grain market. It has also come on record that the deceased was maintaining three vehicles for the said purpose and even the receipts of the purchases of

vegetables and fruits have been appended as Ex. P/2 to Ex. P/32. The said receipts are being disputed by the learned counsel for the appellant on the ground that the actual name of the deceased has not been mentioned on the receipts and the same have been issued on the nickname of the deceased. Once, the receipts have been produced by the claimants to show the actual purchase of the fruits and vegetables from the wholesale market, the said receipts cannot be put aside merely on the ground that the same records the nickname of the deceased. Furthermore, once the deceased was maintaining three vehicle for carrying on the business which fact goes unrebutted, assessment of Rs.20,000/- as monthly income of the deceased cannot be treated to be on higher side for computing the compensation.

No other ground has been raised by the learned counsel for the appellant.

Keeping in view the above, no ground for interfering in the impugned Award dated 23.02.2021 passed by the Motor Accident Claims Tribunal, Rupnagar, is made out.

The present appeal is dismissed.

A sum of Rs.25,000/- deposited by the appellant at the time of filing of the present appeal be remitted back to the learned Motor Accident Claims Tribunal, Rupnagar, to be released the same in favour of the claimants.

July, 01, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

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