

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

**FAO No.274 of 2021
Decided on : 17.03.2021**

United India Insurance Co. Ltd.

... Appellant

Versus

Kamlesh and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Harsh Aggarwal, Advocate
for the appellant.

(The proceedings have been conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J.

The present appeal which has been filed under Section 173 of the Motor Vehicle Act, 1988, is directed against the Award dated 16.12.2019 passed by the Motor Accident Claims Tribunal, Jalandhar (MACT), whereby on account of the death of Ram Kumar, who was working as a Security Guard, the claimants had been held to be paid Rs.5,62,630/- in equal shares. They were also held entitled for interest @ 6% per annum from the date of filing of claim petition alongwith penal interest @ 9%, if the amount is not paid within two months from the date of passing of the Award.

A perusal of the paper-book would go on to show that the same was claimed on account of the fact that the bus of respondent No.5 which was insured with the appellant-Insurance Company bearing registration No.PB08-DS-6251 had hit the cycle of the deceased on 17.12.2018 from behind. The deceased had come under the driver side of

the tyre of the bus at 6:45 AM. The claim as such was that the driver Bhupinder Singh/respondent No.4 had also gone to the hospital and admitted his mistake and had undertaken to bear all the expenses and later on slipped away from the hospital.

The said claim was opposed on the ground that there was no fault of the driver and the said vehicle had been wrongly roped in just to extract money and, there was a valid driving licence as such and a false FIR had been registered. It was also averred that the accident had taken place on account of the negligence of the deceased, who was on the wrong side of the road and was in hurry and came in the middle of the road. It was on account of the fact that he had finished his job of Security Guard and was going to his house in the morning hours. There was denial also regarding the earning capacity of the deceased by the appellant company and that the bus was not involved.

Keeping in view the fact that the driver did not step into witness-box, an adverse inference has been rightly drawn against the Insurance Company, since the FIR had also been registered against him.

While deciding the issue of negligent and rash driving, PW-2 Vishal Malhotra, who was a eye witness, statements as such was taken into consideration by noticing the injuries the deceased had suffered as per the Postmortem Report (Ex.PC). Regarding the issue of compensation, it was noticed that the deceased was 62 years old as per the claim of the claimants, but as per the Postmortem Report, he was 65 years old, which was accordingly relied upon. Keeping in view the

statement of the wife of the deceased that the deceased was working both as a Security Guard at a Showroom of Tyres and getting salary of Rs.8,000/- per month and also as a part time Electrician, his income was assessed @ Rs.7500/- monthly, to assess the yearly income @ Rs.90,000/-. The personal expenses had been taken @ 1/3rd by applying a multiplier of 7 and the income has only been assessed Rs.60,000/- per annum, while awarding a sum of Rs.4,20,000/- as compensation. In addition to that Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses had been awarded, keeping in view the law laid down by the Apex Court in '**National Insurance Company Limited Vs. Pranay Sethi and others**', 2017 (4) RCR (Civil) 1009. The claimants were also held entitled for Rs.72,630/- in lieu of bills of medical treatment (Mark A to Mark D), which had been placed on record. The liability having been fixed upon the appellant-Company, on account of the fact that there was a valid insurance policy and, therefore, the company was liable to pay the amount.

The findings thus which have been recorded by the Tribunal are on the basis of the evidence produced before it and keeping in view the settled principles laid down by the Apex Court in '**Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**', 2009 (3) RCR (Civil) 77, which were modified by the Constitution Bench in the case of **Pranay Sethi (supra)**.

In such circumstances, this Court is of the opinion that no ground is made out for interference in the well reasoned order passed by

the MACT, Jalandhar. Resultantly, there is no merit in the present appeal and the same is dismissed in limine..

March 17, 2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes