

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.870 of 2022(O&M)

Date of decision:28.03.2022

The Oriental Insurance Company Ltd

...Appellant

Versus

Smt. Parkash Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.P.Gupta, Advocate,
Mr. Shubham Gupta, Advocate,
for the appellant-Insurance Company.

Mr. Dheeraj Narula, Advocate
for the caveator/respondents.

ANIL KSHETARPAL, J (Oral)

While assailing the correctness of the award passed by the Motor Accidents Claims Tribunal, Sirsa (hereinafter referred to as 'the Tribunal'), the Insurance Company has filed the present appeal.

On account of death of late Sh. Milakh Raj, the Tribunal while allowing the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, has ordered the payment of compensation of Rs.13,84,447/- to the claimants (respondents herein).

This Bench has heard the learned counsel representing the appellant as well as the claimants at length and with their assistance perused the paper book.

The learned counsel representing the Insurance Company has

made submissions on the following points:-

- (i) The involvement of the vehicle bearing No.HR-24-Y/6988 is not proved.
- (ii) The Tribunal has wrongly assessed the income of the deceased on the basis of the rates notified by the Deputy Commissioner of the district.
- (iii) The Tribunal has erred in assessing the age of the deceased as 50 years at the time of an accident, particularly when as per the record of the hospital, the age of the deceased was recorded as 55 years.

While elaborating, the learned counsel representing the appellant-Insurance Company draws the attention of the Court to the deposition of Sukhdev Singh, who has supported the case of the claimants. The statement of Sukhdev Singh has been placed on the file as Annexure A-3. The learned counsel submits that the conduct of Sukhdev Singh, who has allegedly witnessed the accident, is unnatural, as he did not inform the police about the accident. He further submits that Sukhdev Singh admits that he did not know the number of the motorcycle and colour of the same.

While criticizing the award of the Tribunal, the learned counsel contends that the Tribunal has wrongly ignored the notification issued by the Labour Commissioner under the Minimum Wages Act, 1948 while giving preference to the minimum wages notified by the Deputy Commissioner. He submits that in the absence of concrete evidence, the Tribunal was required to assess the wages of the deceased on the basis of notification issued under the Minimum Wages Act, 1948. He also questioned the award of the Tribunal with regard to the age of the deceased

as noticed above.

With regard to the first argument, it may be noted that Sukhdev Singh is running a shop under the name of 'Kamboj Tractors' on Dabwali Road, Sirsa. The alleged accident took place in front of the shop. He has stated that motorcycle bearing No.HR-24-Y-6988 with 2 persons riding on it came from Sirsa side at a fast speed, in a rash and negligent manner and hit in the motorcycle of Milk Raj.

In cross-examination, he has stated that he does not know the number of the motorcycle or colour of the same. In the examination-in-chief he has stated that he noted down the motorcycle number before both the boys ran away after causing the accident. Hence, the statement of the witness in the cross-examination cannot be read in the manner suggested by the learned counsel representing the appellant, particularly when in the next sentence he has stated that he did not know the number of motorcycle or Milk Raj. There is no categorical statement of Sukhdev Singh that he did not note the number of the offending motorcycle at the time of an accident. The tribunal has, on appreciation of the evidence, recorded a finding of fact. In the absence of clear and categorical material to prove that the Tribunal has misread the evidence, the Appellate Court is not expected to interfere. Moreover, Sh. Sukhdev Singh resides on the first floor of the shop. Learned counsel representing the appellant tried to impeach the credibility of the witness on the ground that his shop was sealed by the authorities. Be that as it may, Sh. Sukhdev Singh was residing on the first floor of the shop, there is no ground to doubt his presence at the spot.

The next argument of the learned counsel representing the appellant is with regard to the assessed income of the deceased. In the

present case, the court in absence of evidence has assessed the income on the basis of minimum wages notified by the Deputy Commissioner of the district. Smt. Parkash Rani widow of Milakh Raj has appeared as PW1 and stated that the deceased was an agriculturist and used to cultivate about 4 acres of land. It has also been stated that he used to take the land on lease and thus earned approximately Rs.15,000/- per month. The Tribunal has assessed the income at the rate of Rs.9700/- per month on the basis of notification issued by the Deputy Commissioner of the district notifying the minimum wages. An agriculturist cannot be equated with an unskilled worker. In any case, the Tribunal has taken a plausible view in the matter. The attention of the court has not been drawn to any statutory provision which mandates the Tribunal to assess the minimum wages on the basis of notification issued under the Minimum Wages Act, 1948.

As regards the last argument, it may be noted that the Tribunal has held that the deceased was 50 years of age on the basis of age noted in the Voter Card. His widow is stated to be 47 years. There is no evidence to prove that the hospital where the deceased was taken after the accident recorded that age on the basis of some proof regarding the date of birth. Moreover, the youngest son of the deceased was about 17 years of age at the time of accident.

In such circumstances, the Tribunal with regard to the age of the deceased cannot be said to be erroneous.

Dismissed.

Needless to observe that the amount of Rs.25,000/- deposited by the appellant shall be remitted to the Tribunal for disbursement.

All the pending miscellaneous applications, if any, are also disposed of.

March 28, 2022
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(ANIL KSHETARPAL)
JUDGE

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