

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-785-1999 &
X-Obj. No.6-CII-2000

DATE OF DECISION: SEPTEMBER 9, 2022

NATIONAL INSURANCE CO. LTD. ...APPELLANT

VERSUS

SMT. ANITA AND OTHERS ...RESPONDENTS/X-OBJECTORS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR.GOPAL MITTAL, ADVOCATE
FOR THE APPELLANT.

MR. ISHPUNEET SINGH, ADVOCATE
FOR MS. JATINDERJIT KAUR, ADVOCATE
FOR THE RESPONDENTS NO.1 & 2-X-OBJECTORS.

MANOJ BAJAJ, J.(ORAL)

Appellant-Insurance company has filed this appeal challenging the award dated 18.1.1999, passed by the Motor Accident Claims Tribunal, Jalandhar whereby the claim petition filed by the widow and the minor child of deceased-Narinder Kumar was allowed and a compensation of ₹2,56,000/- alongwith interest @ 12% per annum was awarded to them.

Briefly, the facts of the case are that on 24.8.1995, at about 6.30 p.m., Narinder Kumar and his friend Jagdev Singh were going from Bhogpur to village Jaffa on a Vespa Scooter bearing No.PB-07-A-2008. When they reached the G.T. Road , Challong, a truck bearing No.PCR-8878 coming from the opposite side, being driven by Sarwan Kumar in a rash and negligent manner, hit the scooter. Both Narinder Kumar and Jagdev Singh received serious injuries, however, Narinder Kumar succumbed to the

injuries at the spot, whereas Jagdev Singh was taken to hospital, but he also died. The accident was witnessed by Hardev Singh, Prem Dutt and Jagdish Singh. The claimants-respondents filed a claim petition claiming Rs.10 lakhs as compensation.

The claim petition was contested by respondents No.1 and 2, the driver and owner of the truck, respectively by filing a joint written statement and denied the accident. They further denied their liability to pay compensation and prayed for dismissal of claim petition.

The respondent No.3-insurance company in the written statement pleaded that respondent No.1-driver was not having a valid driving licence at the time of alleged accident, and also took a stand that no such accident took place. The objection regarding non joinder of necessary parties was raised and prayed that the petition be dismissed.

Upon completion of pleadings and framing of issues, the parties adduced their respective evidence. After examining the evidence available on record, the Tribunal allowed the claim petition and awarded a total compensation of ₹2,56,000/- alongwith interest @ 12% per annum, to be paid by respondents No.1 to 3 jointly and severally, from the date of petition till the payment is made to the claimants.

Hence, the present appeal by the appellant-Insurance Company. Upon receiving notice of this appeal, the claimants/respondents No.1 and 2 filed their cross-objections, for enhancement of compensation.

Learned counsel for the appellant has argued that the driving licence in the name of the driver Sarwan Kumar was not genuine and in this

regard specific objection was raised in the written statement which was proved by examining RW-2 Hari Singh, Clerk from the office of RTA, Solan. But despite that convincing evidence, the liability was fastened upon the insurance company. He submits that the findings on this issue are against the evidence on record, therefore, the same deserves to be set aside. Learned counsel has further argued that similarly, the Tribunal has wrongly assessed the monthly income of the deceased as ₹2000/- to reach the annual dependency of ₹16,000/-. Therefore, the amount of compensation awarded to the claimants is on higher side. He prays that the impugned award be set aside.

On the other hand, learned counsel for the claimants-respondents has submitted that the impugned award is based upon correct appreciation of evidence on record and the compensation awarded is on lower side. He submits that by way of cross-objections, the claimants have prayed for enhancement of compensation. Learned counsel has further pointed out that from the accident, two claim petitions had arisen and the connected FAO No.786-2009 titled National Insurance Company vs. Parvinder Kaur also came up for hearing before this Court on 23.7.2001, when it was sent back before the Tribunal for fresh adjudication on the issue of fake driving licence.

During the course of hearing, learned counsel for the claimants has produced the order dated 23.9.2016 to contend that the findings previously returned in the impugned award dated 18.1.1999 relating to driving licence were not altered and compliance report was sent to this

Court.

Learned counsel for the claimants has further argued that the income of the deceased was ₹5000/- per month, but the Tribunal has erroneously taken it as ₹2000/- and on this sole ground, the compensation deserves to be enhanced.

After hearing learned counsel for the parties and considering the above background, this Court finds that the finding relating to the driving licence of deceased Sarwan Kumar was delivered against the insurance company in the impugned award, and pursuant to the order dated 23.7.2001 in the connected FAO No.786 of 1999, this issue was re-examined by the Tribunal and it maintained the liability of appellant vide decision dated 23.9.2016. Further a perusal of the order dated 23.7.2001 shows that while sending the case back to the Tribunal, the FAO No.786 of 1999 was finally disposed of, but after the decision by Tribunal on 23.9.2016, no appeal by the insurance company was filed, much less, to challenge the finding relating to driving license. Thus, it is apparent that the insurance company has accepted their liability in the connected case. Consequently, this Court does not find any merit in the argument of learned counsel for the appellant relating to the accident or the driving licence of the driver of offending vehicle.

While analyzing the quantum, it is evident that the claimants relied upon the oral deposition of victim's wife, namely, Anita (PW2), who stated that her husband was earning ₹5000/- per month being an employee at a petrol pump. However, no evidence regarding employment of deceased,

much less, by examining the employer or by adducing any other evidence was brought to prove his income as ₹5000/-. Therefore, the Tribunal has rightly assessed his income as ₹2000/- per month. Considering the number of dependents and the age of the victim, the Tribunal has rightly assessed the dependency by deducting 1/3rd of his income, and rightly applied the multiplier of '16'.

Thus, this Court does not find any convincing ground to interfere with the impugned award as the same is based on correct appreciation of evidence on record.

Consequently, the appeal as well as the cross-objections are dismissed.

September 9, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes