

121

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

**FAO-3394-2022 (O&M)
Date of Decision:08.09.2022**

Oriental Insurance Co. Ltd.

.. Petitioner

Vs.

Nina Rani and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

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

...

Manoj Bajaj, J. (Oral)

Appellant-Insurance Company has filed this appeal to challenge the award dated 28.03.2022 passed by Motor Accident Claims Tribunal, SAS Nagar, Mohali, in MACP No.366/2019, whereby the claim petition filed by respondents/claimants No.1 to 4 seeking compensation along with interest for death of victim, namely, Vinod Kumar in vehicular accident was accepted.

Briefly the facts of the case are that on 17.9.2019 at about 6 a.m., Vinod Kumar as per daily routine, was going to Gymnasium at Kurali on his bicycle and when he reached near Yes Bank Kharar road Kurali, a Bajaj (Platina) motorcycle bearing registration No.PB-27-E-6476 being driven rashly, negligently at very high speed by respondent No.1-Nirmal Singh came from behind and struck his bicycle. As a result of the accident, Vinod Kumar suffered grievous injuries on his head and other parts of his body. He was taken to Civil Hospital Kurali, from where he was referred to PGI Chandigarh and on 18.09.2019, he succumbed to the injuries and in this

regard, a case FIR No.87 dated 18.9.2019 under Sections 279, 427 and 304-

A of IPC was also registered at Police Station City Kurali, against respondent No.1-Nirmal Singh (driver of the offending vehicle). The claim was filed against Nirmal Singh (driver of the offending motorcycle), Gurjant Singh (owner of the offending motorcycle) and the appellant/Insurance Company and a sum of Rs.70 lacs was claimed as compensation.

The petition was contested by respondents No.1 and 2 (driver and owner of the offending vehicle) by filing their joint written statement, wherein they denied the accident and pleaded that FIR has been manipulated to help the claimants. It is further pleaded that as the vehicle was insured by respondent No.3, they are not liable to pay compensation.

The claim was also contested by respondent No.3-Insurance company by filing its separate written statement, wherein various objections were raised and pleaded that the driver of the offending vehicle was not having valid driving licence and the vehicle was being used in violation of the terms and conditions of the insurance policy. He prayed for dismissal of the claim petition.

The Tribunal after considering the pleadings, framed six issues and thereafter, the parties adduced their respective evidence. Upon considering the pleadings and evidence on record, the Tribunal vide award dated 28.03.2022, allowed the claim petition and awarded compensation of Rs.26,09,200/- along with interest @ 7% p.a.

Learned counsel for the appellant has confined the challenge to the impugned award only on the ground of quantum of compensation, as according to him, the same is on higher side. Mr. Aggarwal, learned counsel has argued that the victim was a bachelor, therefore, the Tribunal has erroneously deducted 1/3rd of his income to assess the dependency of the

claimants and the Tribunal ought to have deducted 50% of his income towards his own expenses. He has further argued that since the victim was a student, therefore, his notional earnings @ Rs.12,000/- p.m. as assessed by the Tribunal are on higher side, because a skilled workman would earn approximately Rs.10,500/- p.m., therefore, on this ground also, awarded compensation deserves to be reduced. On the issue of assessment of dependency, learned counsel has placed reliance upon the decision of Hon'ble Supreme Court passed in “Sarla Verma and others Vs. Delhi Transport Corporation and another”, 2009(3) R.C.R. (Civil) 77.

After hearing the learned counsel and considering the sole ground raised by the appellant, this Court finds that the victim was having two unmarried sisters in the family, therefore, deduction of 1/3rd as applied by the Tribunal is adequate. Further, merely because the victim was a bachelor, the deduction of 50% of his income cannot be applied as a straight jacket formula. The 1d. Tribunal has examined the entire material on record as well as the decision of the Hon'ble Supreme Court in Sarla Verma's case (supra) before assessing the dependency of the claimants.

The other argument raised by the learned counsel that the notional income taken by the Tribunal as Rs.12,000/- is also without any merit, as Jagmohan Singh, Principal of Guru Kirpa, Private ITI Jhingra Road, Chanalon, Kurali appeared as PW-2 and testified that the victim Vinod Kumar was student of ITI, Mechanic Diesel Engine stream, who was having 100% attendance and was good at studies. He had produced the admission record of the victim along with attendance register. Thus, taking into consideration the entire documentary evidence, the Tribunal has fairly assessed the notional earnings of the deceased.

No other argument was raised.

Resultantly, this Court does not find any merit in this appeal and the same is dismissed.

08.09.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No