

107

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3654-2022 (O&M)
Date of Decision:06.09.2022

Oriental Insurance Co. Ltd.

.. Appellant

Vs.

Bimla and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

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

Mr. Ashish Gupta, Advocate
for respondents/Caveators.

...

Manoj Bajaj, J. (Oral)
CM-10975-CII-2022

This application under Section 5 Limitation Act has been filed
for condonation of delay of 6 days in filing the appeal.

Heard.

For the reasons mentioned in the application, the same is
allowed and delay of 6 days in filing the appeal is condoned.

FAO-3654-2022 (O&M)

Appellant-Insurance Company has filed this appeal to
challenge the award dated 16.04.2022 passed by the Motor Accident Claims
Tribunal, Moga, in MACP No.32/2021, whereby the claim petition filed by
the respondents/claimants No.1 to 3 seeking compensation along with
interest for death of victim, namely, Malkeet Singh in vehicular accident
was accepted.

Briefly, the facts of the case are that on 09.04.2021, Malkeet

Singh along with his wife Bimla was going on motorcycle from his house to

Bus Stand, Dharamkot to drop his wife at Bus Stand. Malkeet Singh was driving motorcycle and Bimla, claimant No.1 was pillion rider. At about 7.30 a.m, when they reached near Udham Singh Chowk, then a fast moving truck bearing No.PB-07/AS-9680 coming from Jalandhar side being driven by its driver at a very high speed in a rash, negligent manner and without blowing horn, hit the motorcycle of Malkeet Singh, due to which Malkeet Singh and claimant No.1 fell on the road and received multiple grievous injuries. The tyre of offending truck ran over the head of victim Malkeet Singh, who died at the spot and the right arm of claimant No.1, resulting death of Malkeet Singh, whereas the right arm of claimant No.1 was amputated. The above said accident took place due to sole negligence and careless driving of respondent No.3, who came from the wrong side and hit his truck with motorcycle of deceased. In this regard, a case FIR No.53 dated 09.04.2021 under Sections 304-A, 337, 338 and 427 IPC was registered at Police Station Dharamkot at the instance of claimant No.1-Bimla against respondent No.3. The claim for Rs.86,90,500/- was filed against Sanjeev Kumar (owner of the offending vehicle), Mohit Singh (driver of the offending vehicle) and the appellant/insurance company.

The petition was contested by Sanjeev Kumar-respondent No.1 (owner of the offending vehicle), by filing his written statement, wherein he denied the accident and further pleaded that as the vehicle was insured by respondent No.2, he is not liable to pay compensation.

The claim was also contested by respondent No.2-Insurance company by filing separate written statement and denied the alleged accident. Further, it was pleaded that the claimants in connivance with other respondents have filed this claim petition. As per pleadings, the

offending vehicle was being plied in violation of the terms and conditions of the insurance policy and prayed for dismissal of the claim petition. Respondent No.3 (driver of the offending vehicle) was proceeded against *ex parte*.

The Tribunal after considering the pleadings, framed seven issues and thereafter, the parties adduced their respective evidence. Upon considering the pleadings and evidence on record, the Tribunal vide impugned award dated 16.04.2022 partly allowed the claim petition and awarded a compensation of Rs.35,29,400/- along with interest @ 6% 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 for appellant has argued that the claimants relied upon the Income Tax Returns of victim Malkeet Singh, which are for the years 2016-17 (Ex.C-12) 2017-18 (Ex.C-10), but the same being three years old prior to the death of the victim, therefore, in the absence of latest income tax returns, the Tribunal was not justified in taking his income to Rs.21,920/-p.m. He further submits that the victim was working as a photographer, who had obtained a loan of Rs.1 lac from the Bank of India to purchase a professional camera, but he even could not repay the loan and as per the evidence of CW-2 Baljinder Singh, Assistant Manager of Bank of India, the account of the borrower was declared non performing account (NPA) w.e.f. May, 2021. He submits that the impugned award warrants interference by this Court.

After hearing the learned counsel and considering the sole ground raised on behalf of appellant to challenge the award, this Court does

not find any merit in the argument advanced by the learned counsel for the appellant. Admittedly, as per the Income Tax Returns brought on record in evidence, the monthly income of deceased Malkeet Singh was by and large same in the years 2016-17 and 2017-18 and the Tribunal has taken the average of both these returns to assess it at Rs.29,920/-. Further admittedly, the accident took place in April, 2021 and the alleged loan of Malkeet Singh was declared NPA w.e.f. May, 2021, thus, this circumstance of declaring his account as NPA is not a material piece of evidence to doubt the income of the victim as assessed by the Tribunal. The year 2020 witnessed breakout of pandemic COVID-19 and taking judicial notice of this, it can be safely inferred that because of various administrative restrictions, all the businesses had suffered adversely, therefore, if no Income Tax Return immediately prior to his death was filed by the victim, it also can not be taken as an adverse circumstance against him.

A perusal of the impugned award reveals that the Tribunal has taken into account all the relevant factors before determining the compensation payable to the claimants and awarded reasonable compensation.

No other argument was raised.

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

06.09.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No