

S. No.213

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

FAO No.5122 of 2016 (O&M)

Date of Decision:30.11.2022

National Insurance Co. Ltd.

.....Appellant

Vs.

Saroj Rani and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. B.S. Taunque, Advocate for the appellant.

Mr. Sandeep Jasuja, Advocate for respondents
No.1 to 4.

DEEPAK GUPTA, J.

CM No.17563-CII of 2016

This is an application for condonation of delay of 42 days in filing the appeal.

Considering the grounds mentioned in the application, which is supported by an affidavit of Sh. Sunil Singh, Assistant Manager, National Insurance Company Ltd., the same is allowed. Delay of 42 days in filing the appeal is condoned.

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This appeal is by the Insurance Company, who is aggrieved by the award dated 01.04.2016 passed in Claim Petition No.RBT-20, CIS No. MACP-02 of 2015 titled Saroj Rani and others Vs. Ashok Singh and others, whereby learned MACT, Fazilka granted compensation of ₹ 21,55,500/- in favour of the claimants.

2. Babu Ram, husband of claimant No.1 – Saroj Rani and father of claimants No.2 to 4, was the owner of Canter No.PB-04-L-9675. As per claimants' case, on 24.07.2014, said Babu Ram along with cleaner Sukha Singh son of Ajaib Singh after loading green fodder in his canter proceeded

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from Fazilka to Jaipur. At about 02:30 am (on intervening night of 24/25.07.2014), as they reached in front of gate of Dairy Farm, a Trolly/ Truck No.RJ-07-GB-0658 (offending vehicle) was lying parked on the road in rash and negligent manner by its driver- respondent No.2 Bhom Singh, without putting any stone around the vehicle or without giving any indicator. Due to this negligent parking of the offending truck, the canter of Babu Ram struck into the offending vehicle from rear resulting in the instant death of Babu Ram. On the statement of Sukha, the cleaner of Canter of the deceased, FIR No.367 dated 25.07.2014 was registered at Police Station City Suratgarh under Sections 279, 304-A, 337 IPC. It was claimed further that deceased Babu Ram was earning ₹30,000/- per month by driving his canter. His age at the time of death was 50 years and he used to contribute ₹25,000/- per month to the claimants. The offending vehicle owned by the respondent- Ashok Singh was insured by National Insurance Company, i.e. appellant of this appeal.

3. The owner and driver did not contest the petition and were proceeded ex parte. The Insurance Company denied the claim due to violation of policy conditions and that no alleged accident took place. The income of the deceased to be ₹30,000/- per month was also denied.

4. After taking evidence, learned Tribunal came to the conclusion that accident was caused due to rash and negligent act on the part of the driver of the offending vehicle. Income of the deceased was taken to be ₹ 15,000/- per month. 30% was added towards future prospects. 1/4th amount was deducted towards personal expenses of the deceased. Multiplier of 11 was applied. After adding compensation towards loss of

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consortium and funeral expenses etc., total compensation of ₹ 21,55,500/- was awarded by the Tribunal vide impugned order.

5. Assailing the award by way of present appeal, it is contended by the appellant Insurance Company that the witnesses examined before the Tribunal were not eye witnesses and so, aspect of negligent act on the part of the driver could not be taken into consideration. Besides, deceased Babu Ram hit his canter from behind to the stationary truck and thus, deceased himself was negligent in causing the accident resulting in his death. One of the claimants', son Rakesh Kumar was 26 years old and was working on a mobile shop as per evidence and so, he could not be considered to be dependent upon the deceased and so, deduction of 1/4th for personal expenses has been wrongly made, as the same should have been 1/3rd. Besides, there was no evidence to take the income of the deceased at ₹ 15,000/- per month and the same has been taken into consideration as a sheer guess work.

6. Learned counsel for the appellant also pointed out that as per the sketch, the National Highway, where the accident took place has a divider and that the offending trolly is parked on the left side. Learned counsel also submits that at least, it is a case of contributory negligence and, therefore, compensation assessed by the Tribunal should have been halved.

7. Refuting the aforesaid contentions, it is urged by learned counsel for the respondents - claimants that issue of negligence has been rightly decided by the Tribunal because the offending truck/ trolly was lying parked without any indicator or without any other article to forewarn the vehicles coming from behind. Learned counsel further submits that

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deceased was not merely a driver of his canter, as he was its owner as well and so, learned Tribunal rightly took this aspect into consideration for assuming the notional income of the deceased at ₹15,000/- per month. It is urged that though the multiplier of 13 was applicable as deceased was 50 years of age as is also conceded by learned counsel for the appellant but still the claimants are satisfied with the compensation as awarded by the Tribunal.

8. Having considered submissions of both the sides and perused the paper book, I find no merit in the appeal.

9. Sukha Singh, the cleaner of the Canter in his testimony as CW2 (Annexure A7) has supported the case of claimants to the effect that accident was caused due to rash and negligent parking of the offending vehicle. Simply because he denied the suggestion during his cross-examination that headlights of the vehicle being driven by the deceased was not working, does not mean that deceased was in a position to instantly see the offending vehicle lying parked on the road. The driver of the offending vehicle did not enter the witness box so as to prove that he had put on the rear indicators so as to forewarn the vehicles coming from the rear side regarding the parking of his vehicle and so, adverse inference is to be drawn that had he entered the witness box, he could not withstand the cross-examination.

10. The contention of the appellant that Sukha Singh is not the eye witness and so, is unreliable has no merit. In fact, said contention is self contradictory because it is stated by the appellant itself in the grounds of appeal that cleaner Sukha Singh also sustained injuries in the accident.

Thus, there is no reason to doubt his presence at the time of accident.

11. Besides, it is the own case of the appellant that accident took place on the National Highway, having a divider. Rough sketch (annexure A1) of the place of accident prepared by the police reveal the location of the offending vehicle and indicates that about half of its body is on the main road.

12. It is important to take note of the Rules of the Road Regulations, 1989 as framed under the Motor Vehicles Act. Rule 15 of these Road Regulations, 1989 is relevant, which reads as under:-

“15. Parking of the vehicle.- (1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) ***A driver of a motor vehicle shall not park his vehicle:-***

- (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;
- (ii) on a foot-path;
- (iii) near a traffic light or pedestrian crossing;
- (iv) in a main road or one carrying fast traffic;***
- (v) opposite another parked vehicle or as obstruction to other vehicle;
- (vi) alongside another parked vehicle;
- (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;***
- (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;
- (ix) on the wrong side of the road;
- (x) where parking is prohibited;***
- (xi) away from the edge of the footpath”.

[bold & italicized portion emphasised]

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13. It is evident from the above said Rule that a driver of a motor vehicle shall not park his vehicle on the main road or one carrying fast traffic; or on roads or at places or roads, where there is a continuous white line with or without a broken line; or where parking is prohibited.

14. In view of above discussion, it is held that the learned MACT rightly came to the conclusion that accident was caused due to rash and negligent parking of the offending vehicle by its driver.

15. Proceeding further, learned counsel for the appellant has drawn attention towards a letter dated 12.08.2014 issued by Haryana Government General Administration Department bearing Endst. No.43/5/2001-3GSII to contend that at the relevant time, minimum wages of driver of the heavy vehicle was ₹9,900/- per month and, therefore, Tribunal erred in assessing the income of the deceased at ₹15,000/- per month. Again, there is no merit in the contention. As per evidence on record, deceased was not simply driver on his own canter and, rather he was himself the owner thereof. He had also employed cleaner Sukha Singh. In such circumstances, the income of the deceased could not be assumed simply on the basis of minimum wages payable to a driver. Learned Tribunal has rightly observed that being the owner of the canter, he must be earning at least ₹15,000/- per month after making payment to the cleaner and other expenses on the vehicle.

16. As per own contention of counsel for the appellant, the multiplier of 13 was applicable instead of 11, as the age of the deceased was 50 years. If it is so, the compensation would go higher than assessed by the tribunal. There are four claimants. Simply because one of the claimants, i.e. son of the deceased was major and working on a mobile shop cannot be

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a reason to exclude him as a dependent of the deceased so as to deduct one third amount towards personal expenses of the deceased. As held by Hon'ble the Supreme Court in Sarla Verma (Smt.) & Others Vs. Delhi Transport Corporation & Another, (2009) 6 SCC 121 and upheld by five Judge Constitutional Bench of Hon'ble the Supreme Court in National Insurance Co. Ltd. Vs. Pranay Sethi and others, (2017) 16 SCC 680, when the number of claimants is 4 to 6, deduction of 1/4th is to be made.

17. Deceased being above 40 years of age, 25% of the income should have been added towards future prospects as Pranay Sethi's case (supra). Thus, annual income of the deceased was ₹1,80,000/- and after adding ₹45,000/- (25%) towards future prospects, his income works out to be ₹2,25,000/-. After making 1/4th deduction, dependency works out to ₹1,68,750/-. When multiplier of 13 is applied, compensation works out to be ₹21,93,750/-. After adding compensation towards loss of consortium to the wife, loss of filial consortium to the children, loss of estate and funeral expenses, total compensation will be higher than what has been assessed by the Tribunal. However, as observed earlier, learned counsel for the respondents of this appeal, i.e. claimants has submitted before this Court that claimants are satisfied with the compensation as awarded by the learned Tribunal nor there is any appeal by the claimants seeking enhancement.

18. On account of above, it is held that there is no merit in this appeal. Dismissed.

November 30, 2022
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No