

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.5650 of 2016 (O&M)
Reserved on: 06.08.2022
Date of decision: 09.08.2022

National Insurance Company Limited
.....Appellant
Versus
Manjeet Kaur and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ram Avtar, Advocate
for the appellant.

Mr. Vivek Suri, Advocate
for the respondents.

ARVIND SINGH SANGWAN J.

Prayer in this appeal filed by respondent No.3/Insurance Company is to the award dated 16.05.2016 passed by the Tribunal vide which the claim petition filed by the claimants was allowed and the amount of compensation was awarded in the following manner:-

HEADS	CALCULATIONS
Income per month	Rs.22,000/-
1/3 rd to be deducted as personal expenses of the deceased	Rs.14,667/- per month
Yearly Income	Rs.14,667/- x 12 = Rs.1,76,004/-
Compensation after multiplier of 16 is applied	Rs.1,76,004/- x 16 = Rs.28,16,064/-
Loss of consortium	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-
Total compensation	Rs.30,41,064/-

This appeal was filed in the year 2016 and on 03.10.2016, the trial Court was directed to adjourn the execution proceedings

beyond the date fixed by this Court and the same is still continuing.

Lower Court record is requisitioned.

Brief facts of the case are that the claimants Manjeet Kaur and others filed the present claim petition on account of untimely death of Malkiat Singh in a motor vehicle accident dated 30.10.2008. Malkiat Singh was going in a mini truck bearing registration No.PB23-C-1005, driven by respondent No.4 – Kala @ Harjit Singh. The truck was loaded with bags of Paddy (Rice) and driven by Kala @ Harjit Singh in a rash and negligent manner, while trying to overtake another truck, met with an accident with a Jeep. On the statement of one eye-witness Amarjit Singh, FIR No.522 dated 30.10.2008 under Sections 279, 337, 304 IPC was registered against Kala @ Harjit Singh.

Respondents No.1 and 2 i.e. the driver and owner of the aforesaid offending vehicle (respondents No.4 and 5 herein) contested the claim petition, however, it was stated that the truck is insured with the appellant/Insurance Company.

Respondent No.3 – National Insurance Company Limited (appellant herein) filed written statement and contested the same on various grounds including invalid and non-effective Driving Licence of Kala @ Harjit Singh; the collusion between the claimants and the driver Kala @ Harjit Singh and that no accident has taken place with vehicle bearing registration No.PB23-C-1005, driven by Kala @ Harjit Singh, which resulted into an accident causing death of Malkiat Singh. The Tribunal thereafter, framed the Issues and under Issue Nos.1 and 2, it was held that the accident was caused due to rash and negligent driving of Kala @ Harjit Singh and accordingly, the claim petition was allowed.

The main contest in the present appeal filed by the appellant/Insurance Company i.e. respondent No.3 is on the point that in fact, no accident took place by the driver of vehicle No.PB23-C-1005.

Counsel for the appellant has referred to the Lower Court record to submit that in the written statement filed by the Insurance Company, it was specifically denied that no accident took place by the rash and negligent driving of Kala @ Harjit Singh, resulting into death of Malkiat Singh.

Counsel for the appellant has further submitted that it has come in the evidence that FIR No.522, which was registered against Kala @ Harjit Singh was later on, compromised between him and the complainant of the FIR namely Amarjit Singh, as per compromise Ex.R-2. In this compromise, Amarjit Singh has stated that though the FIR has been registered in which Malkiat Singh had died, however, as the matter has been settled, he has no objection if the same is cancelled.

Counsel for the appellant has further referred to the report submitted by the police before the Illaqa Magistrate in the said FIR (Ex.R3) wherein again it is stated that though Malkiat Singh son of Pritam Singh had died in the said accident, resulting into registration of FIR No.522, however, the matter has been compromised.

Counsel for the appellant has then referred to an order Ex.R4 vide which the Illaqa Magistrate on the basis of the cancellation report submitted by the police has accepted the same and cancelled the FIR. Counsel for the appellant has further contended that in the

statement of CW-3 Amarji Singh, the eye-witness, who got the FIR registered, though, it is mentioned that the accident was caused due to rash and negligent driving of the offending vehicle driven by Kala @ Harjit Singh but in the cross-examination, this witness has admitted that the FIR (Ex.P4) lodged by him was cancelled by the police authorities and the file was sent to the Additional Chief Judicial Magistrate, Patiala, and therefore, the negligence of Kala @ Harjit Singh is not proved.

Counsel for the appellant has further submitted that even from the statement of RW-1 Constable Manpreet Singh, who has brought the Court file regarding FIR No.522, which was exhibited on record as Ex.R1, the compromise Ex.R2, untraceable report Ex.R3 and the order of the Additional Chief Judicial Magistrate, Patiala, accepting the cancellation report Ex.R4, would reveal that in fact the accident was never caused by rash and negligent driving of Kala @ Harjit Singh.

Lastly, it is argued that even the compensation has been awarded on a higher side as there is no evidence that the deceased Malkiat Singh was, in fact, in the business of selling milk.

In reply, counsel for the respondents/claimants has argued that not only the accident but the rash and negligent driving of Kala @ Harjit Singh, resulting into death of Malkiat Singh is proved from the statement of RW1, who has produced the aforesaid record.

Counsel for the claimants/respondents has referred to the cancellation report Ex.R2 as well as the compromise between the informant Amarjit Singh, who got the FIR No.522 registered and the driver of the offending vehicle i.e. respondent No.1 Amarjit Singh

(respondent No.4 herein), wherein it is specifically mentioned that the FIR was registered on account of death of Malkiat Singh son of Pritam Singh. It is further submitted that even in the cancellation report submitted by the police, it is specifically stated that Malkiat Singh had died in the accident.

It is also submitted that there is nothing on record to show that the Illaqa Magistrate/Additional Chief Judicial Magistrate, Patiala, before accepting the cancellation report has recorded the statement of Amarjit Singh that he has no objection to the cancellation report, though, it is incorrectly mentioned in the order dated 04.05.2009 which, in fact, referred to the cancellation report itself wherein the police has reported that Amarjit Singh has no objection if the FIR is cancelled and therefore, the Illaqa Magistrate/Additional Chief Judicial Magistrate, Patiala, without following the procedure has allowed the cancellation report i.e. without issuing any notice to Amarjit Singh.

It is next argued that even from the statement of Amarjit Singh, who appeared as CW-3, he has stated in an unequivocal terms that the accident occurred due to rash and negligent driving of mini truck, in which the passenger was seriously injured.

In the cross-examination by the appellant/Insurance Company, this witness has stated that after registration of the FIR, he did not receive any summon from any Court and had shown ignorance if the FIR is cancelled by the Additional Chief Judicial Magistrate, Patiala. Counsel for the respondent has argued that this also reflect that before cancelling the FIR, the Additional Chief Judicial Magistrate, Patiala, had not issued any notice to the informant Amarjit Singh.

Counsel for the respondent has next argued that even in the statement of Kala @ Harjit Singh, who appeared as RW-1, in cross-examination, this witness admitted that ***“It is correct that in this accident Malkiat Singh son of Pritam Singh resident of Village Chamarheri, Tehsil and District Patiala, had died.”***

Counsel for the respondent has further argued that this admission of the offending driver i.e. respondent No.1 – Kala @ Harjit Singh (respondent No.4 herein), itself is sufficient to show that the FIR was registered against him on account of causing death of Malkiat Singh in a rash and negligent manner. Even in further cross-examination by the insurance company, this witness also stated that he was never called by any authority or police official regarding cancellation of the FIR. It is also submitted that this witness nowhere stated in his examination-in-chief that no accident took place with truck bearing registration No.PB23-C-1005.

Counsel for the respondent with regard to income of the deceased has referred to the statement of CW-4 Gurdeep Singh, the proprietor of Virk Dairy, who has brought the record including the daily ledgers, etc. with regard to the purchase of milk from Malkiat Singh as Ex.CW4/A and Ex.CW4/B, pertaining to the period 24.05.2007 to 31.12.2007 and 01.01.2008 to 30.10.2008. This witness has stated that the deceased was earning Rs.12,000/- per month from the business of dairy farming as per his record. In cross-examination by the insurance company, this witness has stated that Ex.CW-3/B bears his signatures and denied the suggestion that Malkiat Singh was not supplying milk to his dairy or that Ex.CW4/A and Ex.CW4/B are false and fabricated

documents.

Counsel for the respondents/claimants has also referred to the account statement of Malkiat Singh, which is 'Mark A', containing voluminous papers regarding his account statement, to submit it has come in evidence that Malkiat Singh was supplying the milk everyday to CW-4 since 2007 till his death.

Counsel for the respondents also submitted that even from the statement of Manjit Kaur, widow of deceased Malkiat Singh, who appeared as CW-1, it is proved that the deceased was earning Rs.27,000/- per month from his agricultural and dairy farming business. This witness also stated that Rs.25,000/- were spent on the medical treatment, transportation, etc. and Rs.1,00,000/- on the last rites and bhog ceremony, etc.

Counsel for the respondents has also argued that even in the statement of CW-2, Himmat Singh son of Malkiat Singh, the income of the deceased is proved and in cross-examination by the insurance company, he has denied the suggestion that the income of the deceased was only Rs.1500/- per month.

Counsel for the respondents, lastly, argued that in the absence of any evidence to the contrary led by the insurance company regarding the income of the deceased, the Tribunal has rightly assessed the income of the deceased, however, submits that no amount towards the future prospects was given.

After hearing the counsel for the parties, I find no merit in the present appeal. The primary argument on behalf of the

appellant/Insurance Company is that neither the vehicle bearing No.PB23-C-1005, was involved in the accident nor Malkiat Singh died due to rash and negligent driving of Kala @ Harjit Singh. However, on re-appreciation of the entire evidence, the argument of the appellant/Insurance Company is devoid of merits for the following reasons:-

- (a) At the first instance, the witness CW-3 Amarjit Singh, recorded FIR No.522 dated 30.10.2008 under Sections 279, 337, 304-A IPC, regarding the accident immediately thereafter.*
- (b) The Post-mortem report Ex.C-3 also suggests that Malkiat Singh died in a motor vehicle accident.*
- (c) As per the own case of the Insurance Company, a compromise was effected between the informant CW-3 Amarjit Singh and the driver of the offending vehicle i.e. RW-1 Kala @ Harjit Singh, on the basis of which the police prepared the cancellation report and the same was accepted by the Additional Chief Judicial Magistrate, Patiala. A careful perusal of these documents reveal that in the FIR, it is specifically mentioned that Malkiat Singh died due to rash and negligent driving of Kala @ Harjit Singh; the compromise and the statement Ex.R-2 and Ex.R-3, recorded by the police also show that it is specifically stated that in the accident Malkiat Singh son of Pritam Singh had died.*
- (d) CW-3 Amarjit Singh, has specifically stated that after the FIR was registered, he neither received any summon from the Court nor his statement was ever recorded by the Court regarding cancellation.*
- (e) A perusal of the order of the Additional Chief Judicial Magistrate, Patiala, further show that though it is mentioned that the complainant has given a statement*

that he is satisfied with the cancellation report, however, the said statement is not produced on record. Even otherwise, Amarjit Singh being the informant, was not competent to enter into such compromise in the absence of legal representatives of Malkiat Singh, who were the victims and the aggrieved party.

(f) In the cross-examination of CW-3 Amarjit Singh by the Insurance Company, a suggestion is given that after he has registered an FIR (Ex.P-4), his statement was recorded by the police and in reply he stated that he never received any summons from the Court. This witness also denied the suggestion that he got the FIR registered to help the claimants.

(g) Even in the statement of the offending driver i.e. Kala @ Harjit Singh, who appeared as RW-1, he admitted that Malkiat Singh died in the accident and further stated it to be correct that no compromise was effected between the claimants and himself.

From the oral as well as the documentary evidence, it is apparent that Malkiat Singh died in the accident, which was caused by the rash and negligent driving of Kala @ Harjit Singh and therefore, the findings recorded by the Tribunal on Issue No.1 are affirmed.

With regard to the income of the deceased, it is apparent from the statement of CW-4 Gurdeep Singh, who has proved the record for a period of 02 years i.e. from 24.05.2007 to 31.12.2007 and from 01.01.2008 to 30.10.2008 (Ex.CW-4/A and Ex.CW-4/B), that Malkiat Singh was selling milk in his dairy on daily basis and the voluminous record in the shape of daily register/ledgers, reflect the sale and purchase of milk. Accordingly, the Tribunal has rightly held that the earning capacity of the deceased was Rs.22,000/- per month.

Needless to say that no future prospects were given in this regard and even no cross-appeal has been filed by the claimants, in this regard.

In view of the well settled principle of law laid down by Hon’ble Supreme Court in “*Chandra @ Chanda @ Chandraram and another vs Mukesh Kumar Yadav and others*”, 2021(4) RCR (Civil) 492, that even if the claimants have failed to adduce any documentary evidence regarding the income of the deceased, the oral statement should be believed by the Tribunal, however in the instant case, it has come from the statement of CW-4 Gurdeep Singh that from 24.05.2017 till his death, the deceased was selling milk on his dairy and was earning Rs.22,000/- per month, therefore, the finding on Issue No.2 is also affirmed.

No other argument was advanced.

Accordingly, finding no merit in this appeal, the same is hereby **dismissed**.

Considering the fact that the execution proceedings were stayed before the Executing Court on 03.10.2016, which is continuing for the last 05 years, the appellant/Insurance Company is directed to deposit the amount in terms of the award within a period of 01 month from today.

(ARVIND SINGH SANGWAN)
JUDGE

09.08.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No