

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

**FAO-358-2022 (O&M)
Date of decision: 07.02.2022**

NATIONAL INSURANCE CO. LTD.

...Appellant.

V/S

SHIMLA DEVI AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sandeep Suri, Advocate,
for the appellant.
(Presence marked through Video Conference)

-:-

ARUN MONGA, J. (ORAL)

Aggrieved with the award dated 30.07.2021 rendered by Motor Accidents Claims Tribunal, Karnal, Insurance Company has preferred the instant appeal.

2. Briefly stated, the facts of the case are that on 17.04.2017, at about 4.30 PM, Sham Lal along with one Amrit was going from village Tikri to village Barna side on motorcycle, which was being driven by him at a moderate speed. When they reached GT Road, NH-1 ahead of Merrut Raod near Shani Dev Mandir, suddenly one car bearing registration No. HR-40-B-3462 came from Karnal side. Driver/respondent No.1 was driving the said car rashly and negligently which hit the motorcycle. Due to this, Sham Lal and Amrit fell down and received multiple injuries. Both were taken to Government Hospital where Sham Lal was referred to PGI, Chandigarh. On 26.04.2017, Sham Lal succumbed to his injuries. The said accident was witnesses by one Somnath and his wife. Accordingly, FIR No.422 dated 18.04.2017 under Sections 279/304-A IPC was registered at Police Station City, District Karnal. The claim petition claiming compensation of Rs.20

lacas along with interest @ 24% per annum was filed by the claimants who are widow, children and father of deceased Sham Lal.

Upon notice, respondents No.1 and 2 appeared and filed joint written statement taking preliminary objections regarding maintainability, locus standi, cause of action, non-joinder of necessary parties etc. On merits, it was averred that no accident ever took place.

Respondent No.3-Insurance Company filed separate written statement taking preliminary objections regarding maintainability; locus standi; cause of action; estoppel; jurisdiction; mis-joinder and non-joinder of necessary parties; collusion etc. Both the parties led their respective documentary as well as oral evidence. Accordingly, vide Award dated 30.07.2021, a total compensation of Rs.11,31,692/- was awarded to all the claimants.

3. From the pleadings of parties, following issues were framed by the learned Motor Accident Claims Tribunal :-

- 1) Whether the accident in question took place on 17.04.2017 at about 4.30 PM, in the area of P.S. City Karnal on account of rash and negligent driving of car bearing registration No. HR-40B-3462 by respondent No.1 resulting into death of Sham Lal ? OPP
- 2) If Issue No.1 is proved, whether the claimants are entitled to any compensation, and if so, how much and from whom ? OPP
- 3) Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance policy and/or provisions of the Motor Vehicle Act ? OPR
- 4) Whether the claim petition is not maintainable in the present form ? OPR
- 5) Whether the claimants have no locus-standi and cause of action to file the present claim petition against the answering respondents ? OPR
- 6) Whether the present claim petition is bad for mis-joinder and non-joinder of the necessary parties ? OPR

7) Relief.

4. On the basis of evidence adduced by both the parties, Issues No.1 to 3 were decided in favour of the claimants whereas Issues No.4 to 6 were decided against the respondents.

5. Learned counsel for the appellant-Insurance Company, *inter-alia*, argues that the entire claim has been allowed by the Tribunal below without going into the objection qua the claim and the witnesses conniving with each other to plant the offending vehicle, which was actually not involved in the accident. Learned counsel further argues that the Tribunal wrongly assessed the income of the deceased and the same is on higher side.

6. I have heard learned counsel for the appellant and gone through the case file.

7. The learned Tribunal allowed the claim, *inter-alia*, premised on the following reasoning :-

“Age of deceased :

20. In the claim petition, age of the deceased Sham Lal is mentioned as 45 years which has been reiterated by PW1 Smt. Shimla Devi, widow of the deceased in her testimony. However, no birth certificate or any other document such as Aadhar Card etc in support of age of deceased Sham Lal was tendered in evidence by the claimants. Materially, claimants have tendered in evidence copy of Aadhar Cards of all the claimants as Ex.P1 to Ex.P5, however, the Aadhar Card of deceased Sham Lal was deliberately with-held without any explanation. A perusal of copy of Aadhar Card of PW1 Smt. Shimla Devi Ex.P1 shows that her date of birth is recorded as 01.01.1970. Thus, the age of claimant no.1 Smt. Shimla Devi PW1 on the date of accident i.e 17.04.2017 is shown to be 47 years and 3- ½ months approximately, whereas it is not even the case of claimants that Sham Lal, husband of claimant no.1 Smt. Shimla Devi was younger to her in age. Subsequently, during the course of evidence of respondents, respondent No.3 has tendered copy of Aadhar Card of Sham Lal, since deceased as Ex.R5 which depicts his date of birth as 01.01.1965. It is not the case of claimants that such document has been forged or manipulated by the respondents, and no evidence to rebut such documentary evidence as to the age of deceased Sham Lal, since deceased on

the date of accident i.e 17.04.2017 is shown to be 52 years and 3- ½ months approximately. No doubt, in the postmortem report Ex.P9, the age of the deceased Sham Lal has been stated as 50 years at the time of his death, the basis for determination of age has not been disclosed, whereas it is the contention of learned counsel for respondent No.3 that invariably, the age written in the postmortem report is that disclosed by the relatives of deceased. At any rate, having regard to the deliberate withholding of relevant evidence/material on the part of claimants in the light of attendant circumstances and material brought on record, it is not safe to rely on the age stated in the postmortem report Ex.P9 and it is reasonable to hold that Sham Lal, since deceased was above the age of 52 years at the time of accident. Hence, multiplier of 11 would be applicable with reference to the age of the deceased for the purpose of ascertaining the loss of dependency to the family.

Income of deceased

*21. So far as the income of deceased Sham Lal is concerned, PW1 Smt. Shimla Devi, claimant in her testimony has reiterated the averments in the claim petition that the deceased at the time of his death was working as a cultivator, vegetable grower and dairy farmer and earning Rs.20,000/- per month. However, no evidence in support of the income of deceased Sham Lal has been adduced. In such circumstances, the deceased Sham Lal shall be presumed to be earning minimum wages prescribed by the Government of Haryana for unskilled labourers in the month of April 2017 i.e on the date of accident, which as per notification of Labour Commissioner was Rs.8280/- per month. Thus, the income of deceased Sham Lal is assessed as Rs.8280/- per month.
xxx...”*

8. Having gone through the issues framed by the Tribunal on the basis of record and evidence adduced by the respective parties, it is borne out that neither the Insurance Company took appropriate steps to either get the issue framed with regard to the connivance nor any evidence qua the same has been led by the Insurance Company.

9. Therefore, at the appellate stage to take entirely a new plea cannot be gone into. Further, the Tribunal correctly assessed the monthly income of the deceased as Rs.8280/- as minimum wages for unskilled labourers at the time of accident. In any case, it cannot be said to be on

higher side.

10.
- No grounds to interfere are made out. Dismissed.
11.
- Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 07, 2022
Vandana

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No