

FAO-2312-2019 (O&M)

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

CM-7407-CII-2019 in/and
FAO-2312-2019 (O&M)
Reserved on:- 25.08.2023
Pronounced on:- 10.10.2023

National Insurance Company Limited

...Appellant

Versus

Baljinder Kaur and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Harjinder Singh, Advocate
for the appellant/insurance company.

Mr. Ashwani Arora, Advocate
for respondents No. 1 to 3/claimants.

AMARJOT BHATTI, J.

1. The appellant – National Insurance Company Limited has filed present appeal against impugned Award dated 16.10.2018 passed by learned Motor Accident Claims Tribunal, Chandigarh vide which the claim petition filed by the claimants/respondents No. 1 to 3 seeking compensation on account of death of Bhajan Singh in a motor vehicular accident under Section 166 of the Motor Vehicles Act, 1988 was allowed and the claimants were granted compensation to the tune of Rs.36,31,074/- along with interest at the rate of 7½% per annum from the date of filing of the petition till realization.

2. Baljinder Kaur (wife of deceased Bhajan Singh), Parwinder Kaur (daughter of deceased Bhajan Singh) and Joginder Kaur (mother of deceased Bhajan Singh) have filed claim petition under Section 166 of the

Motor Vehicles Act, 1988 to claim compensation on account of death of

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Bhajan Singh in a motor vehicular accident which took place on 05.05.2018 at about 07:30 p.m. At the time of accident, Bhajan Singh was 54 years old. He retired from Indian Army and was working as Security Guard, posted at Army Tribunal, Chandimandir and used to earn Rs. 36,000/- per month (Rs. 15,000/- as salary and Rs. 21,000/- approximately as pension). On the fateful day of 05.05.2018 at about 07:30 p.m, Bhajan Singh was returning from Chandimandir to his village Amlala while sitting on pillion seat of motorcycle bearing Registration No. PB-65-AP-5976, which was being driven by Gurpreet Singh at fast speed and in a rash and negligent manner. When they reached in front of Beer little short from village Amlala, suddenly a Neel Gaye came in front of them and due to high speed of the vehicle of Gurpreet Singh, his motorcycle struck against the bridge. As a result, Bhajan Singh fell down and received serious injuries. He was taken to Indus Hospital, Derabassi, where he was operated and during his medical treatment, he expired. The accident had taken place due to rash and negligent driving of driver of offending motorcycle. The accident was witnessed by Parwinder Singh son of Randhir Singh. Regarding this accident, DDR bearing No. 24 dated 07.05.2018 was recorded at Police Station Dera Bassi. The claimants have suffered great loss on account of untimely death of Bhajan Singh. They have claimed compensation to the tune of Rs. 75 lacs.

3. Notice of the claim petition was given to the respondents. However, respondent No. 1 Gurpreet Singh initially appeared in person but thereafter, failed to appear and was proceeded against *ex parte*.

In the written statement filed by respondent No. 2, preliminary objections regarding maintainability, jurisdiction etc. were

taken. It was alleged that no such accident took place. The claimants have roped the offending motorcycle as well as the answering respondent unnecessarily in the present claim application in collusion with their own family member i.e. respondent No. 1. The present petition is not maintainable as the driver of offending motorcycle was not having a valid and effective driving license at the time of alleged accident. The respondent No. 1 has failed to comply with the provisions of Motor Vehicle Act and was driving the offending motorcycle in contravention of terms and conditions of insurance policy. On the merits of the case, the facts were denied for want of knowledge and the claimants may be put to strict proof of the same. The answering respondent had no knowledge regarding the accident. Therefore, the insurance company cannot be held responsible to pay the compensation.

4. From the pleadings of the parties, following issues were framed by the Tribunal on 06.09.2018 :-

(1) Whether Bhajan Singh son of Shri Gurmukh Singh has died in a road side accident due to rash and negligent driving of motorcycle bearing registration No. PB-65-AP-5976 by respondent No. 1? OPP

(2) Whether the claimants are entitled to compensation, if so to what amount and from whom? OPP

(3) Whether respondent No. 1 was not having a valid and effective driving license at the time of accident? OPR-2

(4) Relief.

5. In order to prove the claim petition, petitioner No. 1 Baljinder Kaur herself stepped into the witness box as PW-1. The

claimants/petitioners further examined eye witness of alleged accident Parwinder Singh as PW-2, Shakti Singh, Manager O/o Guardian Security and Placement Services, SCO No. 114, 1st Floor, Sector 47-C, Chandigarh as PW-3, Ravinder Kumar, Customer Assistant, State Bank of India, District Courts Branch, Sector 43, Chandigarh as PW-4. Thereafter, learned counsel for the claimants/petitioners tendered documents i.e. copy of DDR Ex.P-20, copy of driving license Ex.P-21, copy of Registration Certificate Ex.P-22, copy of insurance Ex.P-23 and closed the evidence.

6. In order to rebut the case of the claimants/petitioners, no oral evidence was led by the respondent No. 2. However, learned counsel for respondent No. 2 tendered document i.e. copy of insurance policy of the offending motorcycle as Ex.R-1 and closed the evidence.

7. After hearing the arguments advanced by learned counsel for both the parties, the claim petition filed by the claimants/petitioners was allowed by passing Award dated 16.10.2018 vide which compensation to the tune of Rs. 36,31,074/- along with interest at the rate of 7½% per annum, was granted in favour of petitioners/claimants, to be paid jointly and severally by the respondents. Out of the total amount of compensation, an amount of Rs. 40,000/- awarded on account of loss of consortium was ordered to be retained by claimant No. 1 being widow of the deceased and remaining amount of compensation was shared by claimants No. 1 to 3 in the percentage i.e. 60%, 30% and 10% respectively, as detailed therein. Feeling aggrieved of this Award, the present appeal has been preferred by appellant - National Insurance Company Limited.

8. I have heard the arguments of learned counsel for the appellant as well as learned counsel representing the contesting

respondents/claimants.

The learned counsel representing the appellant/insurance company firstly referred to the application bearing CM No. 7407-CII of 2019 filed under Section 5 of the Limitation Act for condonation of delay of 22 days in filing the appeal. It is pointed out that the certified copy of order dated 16.10.2018 was received on 19.11.2018. The counsel before the learned Tribunal sent the certified copy of aforesaid order along with other documents vide letter dated 05.12.2018 to the concerned Divisional Office of the insurance company at Chandigarh. The case file was sent by the Divisional Office vide internal claim note dated 27/28.12.2018 and the said file was received by the said Regional Office. Thereafter, the competent authority gave approval for filing appeal in High Court to Regional Office at Chandigarh on 06.02.2019 and after preparing the draft of Rs. 25,000/-, the same was given to the counsel along with the case file to file the appeal on 15.02.2019. It is prayed that appeal preferred by the Insurance Company is also tagged with the present case. Therefore, the delay in filing the appeal may be condoned and it may be decided alongwith the appeal filed by the Insurance Company.

9. The learned counsel for the appellant/insurance company argued that the Award passed by the learned Motor Accident Claims Tribunal, Chandigarh dated 16.10.2018, fastening the liability of insurance company is not justified. The facts of the case and the law were not rightly appreciated. It is pointed out that as per the facts narrated in the claim petition, Bhajan Singh, the deceased victim was returning from Chandimandir to his village Amlala on 05.05.2018 and he was pillion rider on the motorcycle bearing Registration No. PB-65-AP-5976, driven by his

son Gurpreet Singh. At about 07:30 pm, when they reached near Beer (jungle) little short from village Amlala, a Neel Gaye came on the road and the respondent No. 4 (respondent No. 1 in claim application) lost control due to excessive speed and struck against a bridge, as a result of which the deceased victim received serious injuries and ultimately died during treatment. Regarding this accident, DDR bearing No. 24 dated 07.05.2018 was recorded at Police Station Dera Bassi on the statement of Gurpreet Singh, son of the deceased Bhajan Singh. At the time of recording of DDR, it was claimed that there was no fault of anybody in the accident and his father died suddenly and naturally. Now, at the time of filing of present claim petition under Section 166 of the Motor Vehicles Act, 1988, the facts have been changed by alleging that the accident had taken place due to fast and rash driving of respondent No. 4 who is son of the deceased. It is argued that the facts have been twisted in order to claim compensation. The respondent No. 4 Gurpreet Singh never stepped into the witness box to prove the accident. The claimants have examined Parwinder Singh, eye witness PW-2 and by relying upon his testimony, it was wrongly concluded that the accident had taken place due to rash and negligent driving of Gurpreet Singh, who is now respondent No. 4. Therefore, the findings given by the learned Motor Accident Claims Tribunal, Chandigarh is not justified. It is further pointed out that the involvement of motorcycle bearing Registration No. PB-65-AP-5976 is also doubtful. Gurpreet Singh, the driver of said motorcycle is son of late Bhajan Singh and the said motorcycle has been wrongly involved in the accident to get compensation.

The learned counsel for the insurance company further raised

the issue that the compensation was not rightly calculated. The learned Motor Accident Claims Tribunal, Chandigarh failed to consider that the deceased victim was retired Army Personnel, therefore, his wife is getting family pension. The said family pension has not been considered while calculating the quantum of compensation. The learned counsel for insurance company has relied upon the authority cited in **2018(4) R.C.R. (Civil) 993** of Coordinate Bench in case titled “***Charanjit Singh and others versus Harish Kumar Sachdeva and others***”, where it was concluded that *the claimants were entitled to benefit of difference of pension and family pension for computing loss of dependency*. On similar lines, he has relied upon an another authority cited in **2015(8) R.C.R. (Civil) 115** of Coordinate Bench in case titled “***Suman Lata and others versus Ram Singh and others***”, where again it was held that *the pension received by the widow was to be considered while computing the income of deceased*. Thus, the compensation awarded by the learned Motor Accident Claims Tribunal, Chandigarh is towards the higher side. The Award passed by the learned Motor Accident Claims Tribunal, Chandigarh is based on presumption, ignoring the actual facts. It is prayed that the appeal preferred by the insurance company may kindly be accepted and the impugned Award dated 16.10.2018 passed by the learned Motor Accident Claims Tribunal, Chandigarh may kindly be set aside.

10. On the other hand, the learned counsel for respondents No. 1 to 3/claimants argued that the facts of the case and the evidence on record were rightly appreciated by the learned Motor Accident Claims Tribunal, Chandigarh. The accident as well as the manner in which it took place is duly proved on record from the testimony of Parwinder Singh, eye

witness, PW-2. Regarding this accident, DDR No. 24 dated 07.05.2018 was recorded at Police Station Dera Bassi, which is Ex.P-20. The said DDR was recorded on the statement of Gurpreet Singh who was driving the motorcycle at that time and the manner of accident is proved by examining Parwinder Singh, eye witness, PW-2. The statement of eye witness cannot be ignored. He rightly stated that the accident had taken place due to fast, rash and negligent driving on the part of Gurpreet Singh. Bhajan Singh was seriously injured who remained under treatment for three days and ultimately succumbed to the injuries. The death summary prepared by the hospital is Ex.P-6. The Postmortem Report is Ex.P-7. Therefore, there is ample evidence on record to prove the accident as well as rash and negligent driving of respondent No. 4 (respondent No. 1 in the claim application).

The learned counsel for respondents No. 1 to 3/claimants further pointed out that the quantum of compensation was rightly calculated by the learned Motor Accident Claims Tribunal, Chandigarh. Admittedly, Bhajan Singh had retired from Indian Army. He was drawing pension. The statement of account of his pension account in State Bank of India, Sector 43 Branch is proved on file by examining Ravinder Kumar, Customer Assistant as PW-4. The statement of account is Ex.P-19. He was also serving as Security Guard with Armed Force Tribunal, Panchkula and was drawing salary of Rs. 17,988/- and this fact is also proved on file by examining Shakti Singh, Manager as PW-3. One of the claimant has also stepped into the witness box to prove this fact. It is argued that Baljinder Kaur is getting family pension which is her statutory right. The pension drawn by her cannot be deducted while calculating the quantum of

compensation. The learned counsel for the respondents No. 1 to 3/claimants have also relied upon the judgment of **Coordinate Bench in FAO No. 7007 of 2019 (O&M), decided on 29.01.2020**, case titled “*The New India Assurance Co. Ltd. Versus Tripta Rani & Ors.*”, where by relying upon the judgment of Apex Court cited in **2018 AIR (SC) 5034**, case titled “*Sebastiani Lakra & Ors. Versus National Insurance Company Ltd. & Anr.*”, where it was concluded in para No. 12, which runs as under :-

“12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to ‘just compensation’ under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.”

Several other judgments of Coordinate Bench were also relied upon. Therefore, the quantum of compensation has been rightly assessed by considering the pension of the deceased as well as his salary by working as Security Guard. The arguments advanced by learned counsel for insurance company does not hold any ground. The vehicle was insured

with the appellant (respondent No. 2 in claim application), therefore, the insurance company cannot avoid its liability. It is prayed that appeal preferred by the insurance company may kindly be dismissed.

11. I have considered the arguments advanced by learned counsel for the insurance company as well as learned counsel for the respondents No. 1 to 3/claimants and have gone through the trial Court record carefully. In the case in hand, there is delay of 22 days in filing the appeal. However, no reply is filed by the counsel for respondents No. 1 to 3/claimants to the said application. The present appeal is pertaining to setting aside the Award dated 16.10.2018 vide which compensation was awarded to the claimants on account of death of Bhajan Singh in the motor vehicle accident. Keeping in view the averments made in the application, which is duly supported by an affidavit of an Officer of appellant's company and in the light of the settled position that a party should not be denied access to justice on hyper technical grounds and in the interest of justice, taking a lenient view, delay of 22 days in filing the appeal is condoned. The application bearing CM No. 7407-CII of 2019 stands disposed of accordingly.

12. Firstly, the insurance company has disputed the manner of accident as well as involvement of motorcycle bearing Registration No. PB-65-AP-5976 in the accident. In this case, claim petition has been filed by Baljinder Kaur widow, Parwinder Kaur unmarried daughter and Joginder Kaur mother of late Bhajan Singh. Gurpreet Singh, respondent No. 1 is son of late Bhajan Singh who was driving the motorcycle at the time of accident. As per the facts narrated in the claim petition on 05.05.2018 at about 07:30 pm, Bhajan Singh was returning home on the

motorcycle bearing Registration No. PB-65-AP-5976, driven by his son Gurpreet Singh. When they reached near Beer (jungle) little short from village Amlala, a Neel Gaye came on the road suddenly, as a result, Gurpreet Singh – respondent No. 4 lost control over his motorcycle and hit against the bridge, as a result of which Bhajan Singh sustained serious injuries and ultimately died during treatment. The DDR bearing No. 24 dated 07.05.2018 Ex.P-20 was recorded on the statement of Gurpreet Singh, respondent No. 4. While recording this DDR, obviously he stated that nobody was responsible for the accident and his father died suddenly and naturally. The present claim petition has been filed under Section 166 of the Motor Vehicles Act, 1988. In the claim petition, it is alleged that the accident had taken place due to fast, rash driving of Gurpreet Singh, respondent No. 1 and in order to prove this fact, Parwinder Singh PW-2 has stepped into the witness box. During cross-examination, it has come on record that Parwinder Singh is an agriculturist having no relation with the family of claimants. He claimed that he was present on the spot where the accident took place and he had admitted the injured to the hospital. Even if the manner in which the accident took place is considered as it is, it will clearly show that Gurpreet Singh was driving his motorcycle at a high speed, therefore, he could not control his motorcycle when Neel Gaye suddenly came on the road and in order to avoid the hit, he lost balance and struck against the road side bridge. Therefore, rash and fast driving on the part of Gurpreet Singh respondent No. 4 is duly proved on record. It was the duty of Gurpreet Singh to drive his motorcycle carefully, at a reasonable speed so that he could have stopped his vehicle in case an animal comes on the road suddenly. Therefore, I do not find any reason to

interfere in the findings given by the learned Motor Accident Claims Tribunal, Chandigarh pertaining to issue No. 1 and the same is accordingly, upheld.

13. The other point raised by learned counsel for the appellant/insurance company was quantum of compensation. The main argument advanced by learned counsel for the insurance company was that late Bhajan Singh was an Army personnel. He was drawing pension, therefore, his wife is also getting family pension and the said family pension should have been considered while calculating the quantum of compensation. There are large number of authorities where it is held that the family pension received by the family is their statutory right and it cannot be considered or deducted while calculating the quantum of compensation. Therefore, by relying upon the judgment of Apex Court in ***Sebastiani Lakra & Ors. Versus National Insurance Company Ltd. & Anr. (supra)***, I do not find any force in the arguments advanced by learned counsel for the insurance company. The perusal of findings pertaining to issue No. 2 shows that the learned Motor Accident Claims Tribunal, Chandigarh rightly considered the pension received by the deceased Bhajan Singh as well as the salary received by him as a Security Guard. The learned counsel for claimants examined all the relevant witnesses to prove the pension as well as salary of late Bhajan Singh. Considering his age as 54 years (D.O.B. - 12.12.1963), he was given 10% increase in income and thereafter, his annual income was also considered towards Income Tax and after appropriate deduction, the annual income was considered. 1/3rd income was deducted towards personal expenditure as the deceased left behind his widow, unmarried daughter and old mother

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and considering the dependency of the family, 1/3rd deduction is just and appropriate. By applying the authority of *Smt. Sarla Verma & others versus Delhi Transport Corporation and another*, 2009(3) R.C.R.(Civil) 77, the multiplier of 11 was rightly applied and the quantum of compensation was rightly calculated to the tune of Rs. 35,61,074/-. The claimants were further granted compensation under conventional heads and the total compensation was calculated to the tune of Rs. 36,31,074/-. Therefore, the learned Motor Accident Claims Tribunal, Chandigarh rightly calculated the quantum of compensation and it was rightly apportioned in favour of the claimants in the relief clause. The rate of interest awarded by the learned Motor Accident Claims Tribunal, Chandigarh is also reasonable, considering the period when the said case was decided. Therefore, I do not find any reason to interfere in the findings given by the learned Motor Accident Claims Tribunal, Chandigarh pertaining to issues No. 2 and 3 and the same are upheld.

Resultantly, the compensation awarded by the learned Motor Accident Claims Tribunal, Chandigarh is just and reasonable and the same do not require any interference. The appeal preferred by the appellant – National Insurance Company Limited is accordingly, declined.

Pending application(s), if any, shall stands disposed of.

The photocopy of record received from the Tribunal be sent back to the concerned quarter.

10.10.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
Yes/No