

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

232/2

FAO-782-1997 (O&M)
Date of decision : 06.12.2023

Oriental Insurance Company Limited

.....Appellant

Versus

Gurminder Kaur and another

..... Respondents

FAO-903-1997 (O&M)

Gurminder Kaur

.....Appellant

Versus

Kavi Ram Bansal and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. D.P. Gupta, Advocate,
for the appellant-Insurance Company in FAO-782-1997 and
for respondent No.2-Insurance Company in FAO-903-1997.

None for the respondents in FAO-782-1997 and
for the appellant in FAO-903-1997.

AMAN CHAUDHARY, J.

1. The aforesaid appeals are being decided together, arising out of the same award.

2. It has been stated in the grounds of appeal in FAO-903-1997, deceased Gurpreet Singh @ Jolly and Amardeep Kaur @ Chandni were father and mother of appellant-Gurminder Kaur. Deceased-Amardeep Kaur

was dealing in the business of supply of electric bulbs. The compensation assessed by the Tribunal is on the lower side, by wrongly applying the multiplier of 18 instead of 30, she being 22 years. It has also been averred that Surinder Pal Singh Palli was driving the car at the time of accident, which is proved from the evidence led by the claimant, despite that the Tribunal has wrongly held negligence on the part of the deceased Gurpreet Singh @ Jolly and denied the compensation.

3. On the other hand, learned counsel for the Insurance Company, submits that the Tribunal erred in granting the compensation to the claimant without appreciating the facts and evidence in the proper manner and finding regarding the same requires to be reversed. The claim of the death of Gurpreet Singh @ Jolly, was rightly rejected, as the deceased, who himself was driving the car, was found negligent. Thus, he prays for the dismissal of the said appeal.

4. Heard and perused the paper book.

5. Admittedly, on 23.01.1995 in a roadside accident, Gurpreet Singh @ Jolly, his wife Amardeep Kaur @ Chandni, Surinder Pal Singh Palli and Monika had died.

6. The learned Tribunal while deciding the issue regarding the negligence, due to which the accident had taken place, had recorded as under:

“9. Ujjal Singh, who is the eye witness of the accident, when stepped into the witness box deposed that on 23.01.1995, he was going in a Matador from Patiala to Delhi, to see off his sister's son namely, Surinderpal Singh, who was going to Canada, along with his wife; that Surinder Pal Singh and his wife were travelling in another car bearing registration No.PB-11D-7200, which was being driven by Gurpreet Singh; that wife of Gurpreet Singh was also travelling in the said car; that Gurpreet Singh was driving the said car at a very fast

speed, in a very rash and negligent manner; that when they reached near the canal bridge of village Ganda Kheri, on Patiala-Rajpura road, the driver of the car could not control it and the car fell down into the canal, as a result of which all the four occupants of the car, namely, Surinder Pal Singh Palli, his wife and Gurpreet Singh and his wife, died. He has further deposed that he informed the police at Rajpura, and the police obtained his signatures. According to him the accident took place due to the rash and negligent driving of Gurpreet Singh. Copy of DDR No.24 dated 24.01.1995 of P.S. Sadar, Rajpura has also been placed on record, which also shows that the said car was being driven by Gurpreet Singh at the time of accident.

10. To rebut this evidence of the claimants, the respondents did not lead any evidence. So from the statement of Ujjal Singh, AW2, who is the eye witness of the occurrence, it stands established on record that the offending car was being driven at the time of accident by Gurpreet Singh. Ex.AW3/A is the copy of the post mortem report of Gurpreet Singh. Ex.PX is the copy of post mortem report of Chandni alias Amardeep Kaur.

11. Hence, the discussion made above is indicative of the fact that issue No.1 in all the claim petitions stood proved with regard to the death of the deceased viz. Surinder Pal Singh Pally, Smt. Monika, Gurpreet Singh alia Jolly and his wife Amardeep Kaur alia Chandni, on account of rash and negligent driving of the car in question by Gurpreet Singh. This issue is, therefore, adjudicated upon accordingly.”

7. Perusal of the award shows that as per DDR, registered by Ujjal Singh-AW2, the car in question was being driven by Gurpreet Singh @ Jolly, to which in rebuttal no evidence was led by the claimant, therefore, there is no error in the findings of the Tribunal declining the claim on account of the death of Gurpreet Singh @ Jolly.

8. With regard to the argument that since, name of the occupant of the car was mentioned as Chandni, thus the claimant Gurminder Kaur d/o Amardeep Kaur cannot be held entitled to the compensation, is not tenable on account of the fact that in the relief clause of the claim petition, the name of her mother was mentioned as also in view of the categorical findings recorded by the Tribunal in this regard that, “...Further there is no rebuttal to

this fact that Gurminder Kaur is not daughter of Amardeep Kaur though her paternity does not stand established at all, but there is no rebuttal to this fact on record that Amardeep Kaur who died in the motor vehicular accident did not give birth to any child, as no written statement was filed by her in the divorce petition contradicting the averments made by the petitioner for seeking the divorce. So taking all these facts into consideration I come to this conclusion that Gurminder Kaur claimant is entitled to claim compensation being the daughter of Amardeep Kaur, now deceased.”

9. Evidently, there was no documentary evidence produced by the claimant-appellant with regard to income of the deceased-Amardeep Kaur, therefore, her income taken by the Tribunal as Rs.450/- per month cannot be faulted with. However, with regard to the enhancement of the compensation, this Court can make a profitable reference to the law laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009(3) RCR (Civil) 77, **National Insurance Company Limited vs. Pranay Sethi and others** 2017(4) RCR (Civil) 1009 and **Janabai vs. ICICI Lambord Insurance Co. Ltd.**, (2022) 10 SCC 512 and accordingly the appellant is held entitled to grant of future prospects to the extent of 40%, the deceased being self employed and also for compensation under the conventional heads i.e. funeral expenses Rs.18,000/-; loss of estate Rs.18,000/-; filial consortium to appellant being daughter Rs.48,000/-. However, since the deceased-Amardeep Kaur was 22 years, the multiple of 18 applied by the Tribunal is correct.

10. As a necessary corollary, the total compensation comes to Rs.2,20,080/- (450+40% (towards future prospectus) x 12 x 18 (multiplier), + Rs.84,000 (conventional heads). Thus, the enhanced compensation of

Rs.1,18,080/-, over and above the amount of Rs.1,02,000/- already awarded, alongwith interest at the rate of 7.5% per annum from the date of filing of the present appeal, till its realization shall be paid to the claimant-appellant by the respondents, as ordered by the Tribunal, within a period of 2 months from the date of receipt of a certified copy of this judgment. Failing which, the amount shall accrue an interest as awarded by the Tribunal.

11. Modifying the award to the aforesaid extent, the appeal i.e. FAO-903-1997 is disposed of and appeal i.e. FAO-782-1997 is dismissed.

12. Registry is directed to send a copy of the judgment to the concerned Tribunal for necessary compliance.

13. Photocopy of the judgment be placed on the file of the connected case.

06.12.2023
Ankur

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes	/	No
Whether reportable	:	Yes	/	No