

FAO-5628-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.128

Case No. : FAO-5628-2023 (O&M)

Date of Decision : October 31, 2023

United India Insurance Co. Ltd. Appellant
vs.
Gurjit Kaur and others Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Harinder Kumar, Advocate
for the appellant.

* * *

GURBIR SINGH, J. :

1. The United India Insurance Co. Ltd. (for short – the Insurance Company) has preferred this appeal against the Award dated 26.10.2022, passed by the learned Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as – the Tribunal), wherein liability of the car insured by the appellant-Insurance Company, was held to be of 40% and liability of the offending truck was held to the extent of 60%.

2. The brief facts of the case, as culled out from the paper book, are that on 13.05.2019, claimant Gurjit Kaur (respondent no.1) along with her late husband Bhola Singh, hired a car bearing registration No.PB-01-C-2007, for Delhi Airport. The said car was being driven by Gurpreet Singh (respondent no.6). On the way, when they reached near Narwana Railway Phatak, Patiala Road, Narwana, the construction work of flyover was in progress, a truck bearing registration No.HR-56-B-6235, being driven by

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Karamvir (respondent no.4) in rash and negligent manner and at a very high speed, came from opposite side and without giving any indication or blowing horn, struck against the car, as a result of which, Bhola Singh died at the spot and Gurjit Kaur sustained multiple injuries. FIR No.133 dated 14.05.2019 under Sections 279, 304-A, 337, 427 IPC was registered at Police Station Narwana City, Narwana.

3. Claim petition was filed by Gurjit Kaur, Arshpreet Singh Walia and Jasveen Kaur Walia being widow, son and daughter of deceased Bhola Singh. After appreciating the evidence on record, the learned Tribunal held that though negligence was also attributed to driver of car (respondent no.6) but negligence on the part of driver of the truck (respondent no.4) was held to be on higher side. So, composite negligence on the part of both drivers i.e. respondents no.4 and 6 was held to be in the ratio of 60:40. The claim petition was partly allowed with costs and claimants were held entitled to the tune of Rs.36,32,000/- in equal shares along with interest @ 7½ per annum.

4. Feeling aggrieved against the aforesaid Award, the present appeal has been filed by the Insurance Company through which the car in question was insured.

5. Learned counsel for the appellant Insurance Company vehemently contended that driver of the car was not imputed any role for causing the accident. So, the claim petition qua the car in question was liable to be dismissed. Learned Tribunal has failed to appreciate that there was nothing on record to prove negligence of driver of the car and the finding that the driver of car was also driving the vehicle in rash and

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negligent manner is without any basis. It has been further pointed out that the widow of the deceased did not produce true facts of the case before the learned Tribunal. The FIR was lodged by driver of the car himself submitting therein that Gurjit Kaur is his Maasi (mother's sister) and he was taking them to Delhi Airport as a relative and not in the capacity of taxi driver. Gurjit Kaur-CW, deposed in the Court that she and her husband hired car for going the Delhi Airport. The car was being driven by respondent No.3 at a high speed in a rash and negligent manner. So, the improved version before the learned Tribunal regarding negligence of car's driver could be result of connivance of claimants with the driver of the car for getting passed the illegal claim in favour of the claimants. It has been further argued that the amount of compensation is on higher side. The higher rate of interest is granted. The impugned Award qua the liability of appellant Insurance Company to the extent of 40% be set aside.

6. I have heard learned counsel for the appellant Insurance Company and also perused the case file.

7. It is well settled that proceedings before the Tribunal are summary in nature and in summary proceedings, claimants are required to prove the facts on the basis of preponderance of probability. Claimant/respondent no.1, who is witness to the accident, stepped into the witness-box and faced the cross-examination. Learned counsel for the appellant has pointed out minor discrepancies. It is submitted that in the statement of claimant/respondent no.1, who appeared as CW-1 before the learned Tribunal, she deposed that they hired a car for going to Delhi Airport but in

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the FIR, lodged by driver of car (respondent no.6), it was stated by him that claimant/respondent no.1 was his Maasi (mother's sister) and Bhola Singh (since deceased) was his Masar (husband of mother's sister). He further stated that he was taking them to Delhi Airport as a relative and not in the capacity of a Taxi Driver. Such a minor discrepancy has no effect on the case of the claimant(s). Discrepancies always occur in the statement of witnesses and moreover, every person is selfish by nature. Respondent no.6 lodged the FIR and it is not expected that he would have got recorded something against him. Respondent no.6 did not step into the witness-box. No other evidence has been led to rebut the statement of Gurjit Kaur – claimant/respondent no.1. The FIR was lodged by respondent no.6 against the driver of the truck and police investigated the matter on that line and submitted charge-sheet accordingly but proceedings before the Tribunal are independent and in the absence of any evidence and also keeping in view the statement of Gurjit Kaur – claimant/respondent no.1 that respondent no.6 himself was also negligent in driving the car and was driving the car at high speed and could not apply the brakes, so, in such circumstances, the learned Tribunal has rightly held that there was composite negligence on the part of the driver of truck and driver of car and has rightly held the negligence in the ratio of 60:40.

9. Learned Tribunal has correctly held that deceased was 44 years of age. On the basis of Income Tax Returns (Ex.C-4 and Ex.C-5), income of the deceased was taken as Rs.3,00,000/- per annum and no income from agriculture has been taken into consideration. Only 25% is considered for

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future prospects. The learned Tribunal has awarded the compensation in the following manner :-

<u>Sr.No.</u>	<u>HEADS</u>	<u>CALCULATION</u>
1.	Annual Income	Rs.3,00,000/-
2.	25% to be added as future prospects	Rs.3,00,000/- + Rs.75,000/- = Rs. 3,75,000/-
3.	Deduction of 1/3 rd as personal expenses	Rs.3,75,000 – Rs.1,25,000/- = Rs.2,50,000/-
4.	Multiplier of 14 applied	Rs.2,50,000/- x 14 = Rs.35,00,000/-
5.	Funeral Expenses	Rs.16,500/-
6.	Loss of estate	Rs.16,500/-
7.	Loss of consortium/filial consortium	Rs.44,000/- x 3 = Rs.1,32,000/-
8.	TOTAL COMPENSATION	Rs.36,32,000/-

10. Learned counsel for the appellants has failed to show how the compensation awarded is on the higher side. I am of the considered opinion that there is no illegality or perversity in the compensation awarded by the learned Tribunal. So, I do not find any ground to interfere in the lawful Award passed by the learned Tribunal. Accordingly, the present appeal is without any merit and the same is dismissed in limine.

11. Pending applications, if any, shall stand disposed of along with this judgment.

October 31, 2023
monika/renu

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.