

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

FAO-3646-2017 (O&M)

Reserved on: 09.05.2023

Date of pronouncement: 18.05.2023

National Insurance Company Ltd.

...Appellant

Versus

Kalpana Kaur and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Abhishek Goyal, Advocate for  
Mr. Pardeep Goyal, Advocate for the appellant.

Mr. Vipul, Advocate for  
Mr. Ashwani Arora, Advocate  
for respondents No.1 to 5.

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**H.S. MADAAN, J.**

Briefly stated facts of the case are that on account of unfortunate death of one Avtar Singh in a motor vehicular accident which took place on 01.08.2016 at about 4.15 PM in the area near village Bahik Pachharian, statedly on account of rash and negligent driving of bus No.PB-30-R-1078 (for short 'the offending bus') by respondent No.1 Sukhvinder Singh @ Sukhmandar Singh, LRs of deceased namely his widow Smt. Kalpana, aged about 29 years, minor daughter Aprana Singh, aged about 07 years, minor son Master Lovedeep Singh, aged about 04 years, mother Smt. Harbans Kaur, aged about 58 years and father Sh. Nachhatar Singh, aged about 61 years, had brought a claim petition under

Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Sukhvinder Singh @ Sukhmandar Singh driver, M/s New Deep Motors registered owner and National Insurance Company Ltd. Chandigarh insurer of the offending bus.

2. As per case of the claimants on the fateful day i.e. on 01.08.2016 Avtar Singh along with Kulwinder Kaur was going from Baba Budda Sahib to Faridkot on a motorcycle and Kulwinder Kaur @ Raj Kaur was pillion riding the same. The said motorcycle was being followed by Baljit Singh and Kewal Singh on a separate motorcycle. When they were on a road leading from Makhu to Zira near village Bahik Pachharian, the offending bus being driven by respondent No.1 in a rash and negligent manner came from behind and after overtaking the motorcycle of Baljit Singh, it struck against the motorcycle being driven by Avtar Singh. Resultantly, both the riders fell on the road and received injuries. Avtar Singh died on the spot whereas Kulwinder Kaur was referred to Govt. Medical College, Faridkot where she died. FIR No.113 dated 01.08.2016, for offences under Sections 304-A, 279, 337, 338 and 427 IPC was registered against Sukhvinder Singh @ Sukhmandar Singh. According to the version of the claimants, the deceased was aged about 31 years and was earning Rs.12,000/- per month.

3. On being put to notice, all the three respondents appeared. Respondents No.1 and 2 filed a joint written statement whereas respondent No.3 came up with a separate written statement. In the joint written statement filed on behalf of respondents No.1 and 2, though they admitted the happening of accident near the place as mentioned in the

claim petition but they denied that the mishap had taken place with the offending bus being driven by respondent No.1 and owned by respondent No.2. According to these respondents, Avtar Singh was under influence of liquor and was trying to cross the main road when his motorcycle was hit by car going ahead of the bus, resultantly Avtar Singh bounced in the air and fell on the road. The motorcycle came underneath the bus in question. False implication of respondent No.1 has been pleaded.

4. In the written statement submitted on behalf of the respondent No.3-insurance company, the assertion in the claim petition were controverted stating that the driver of the offending bus was not holding a valid and effective driving license and the bus did not have a valid route permit. In the end, all the three respondents prayed for dismissal of the claim petition.

5. From the pleadings of the parties, following issues were framed:-

1. Whether Avtar Singh died in a motor vehicle accident which was caused due to rash and negligent driving by respondent No.1 while driving vehicle bearing registration No.PB-30R-1078? OPA.
2. Whether the claimants are entitled to compensation on account of death of Avtar Singh? If yes, from whom and to which extent? OPA.
3. Whether the driver of offending vehicle was not holding a valid driving licence at the time of accident.? OPR.
4. Relief

6. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

7. After hearing arguments, Motor Accidents Claims Tribunal, Chandigarh, (for brevity 'the tribunal'), vide award dated 04.03.2017 granted compensation of Rs.19,13,000/- to the claimants with interest @

8% per annum from the date of filing of claim petition till payment, payable by all the three respondents jointly and severally. The claim petition was allowed with costs.

8. Finding the compensation awarded to be on higher side, respondent No.3-insurance company has approached this Court by way of filing an appeal, notice of which was given to the respondents/claimants who have put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record.

10. In this case, the tribunal on analysis of the evidence brought before it, considering the eye witness account of the accident provided by PW1 Baljit Singh in the form of his affidavit Ex.PW1/A deposing inconsonance with the case of the claimants in the claim petition coupled with the fact that a criminal case had been registered against respondent No.1, copy of FIR being Ex.P2 and site plan Ex.P1, copy of post mortem report of deceased Ex. P4 and the fact that respondent No.1 had not appeared to rebut the evidence adduced by the claimants has given a clear finding that respondent No.1 was author of the accident by his rash and negligent driving and Avtar Singh had suffered injuries in that accident to which he had succumbed. It being so, petitioners/claimants being LR's of deceased were found entitled to get compensation from the respondents.

11. The tribunal had taken the age of deceased to be 31 years, though in the claim petition, the claimants had contended that he was earning Rs.12,000/- per month but they could not produce any evidence in that regard. During the course of arguments before the tribunal,

counsel for the claimants had argued that income being earned by a daily wager be taken as income of the deceased. Therefore, the tribunal assessed the monthly income as Rs.8000/-. Although, learned counsel for the appellant-insurance company has submitted that at the relevant time, as per schedule issued by Labour Commissioner, Punjab, an unskilled labourer was drawing wages as on 01.03.2016 @ Rs.7210.52/-, semi skilled Rs.7990.52/-, skilled Rs.8887.52/- and the monthly income of deceased taken to be Rs.8000/- is on the higher side but I do not find myself in agreement with learned counsel for the appellant on this point. Such schedule only provides help and assistance in assessing income of a person when no documentary evidence is available. If we see the schedule also showing minimum wages w.e.f. 01.03.2016 between three categories of labourers, there is a variation from Rs7210.52 to 8887.52/-, therefore, the tribunal taking Rs.8000/- per month as income of the deceased cannot be faulted.

11. However, with regard to grant of future prospects, the tribunal has committed an error in granting future prospects @ 50% when as per judgment **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, the increase could be upto 40% only. Thus, the total annual income of deceased comes out to be Rs.1,34,400/- (8000 + 3200 x 12). Deducting 1/4<sup>th</sup> of the amount towards personal and living expenses of the deceased, the dependency of the claimants comes out to be Rs.1,00,800/- (134400 – 33600).

12. Multiplier of 16 has been rightly been used. Doing that, the compensation comes out to be Rs.16,12,800/-.

13. The tribunal has awarded a sum of Rs.1 lakh to the claimants towards loss of consortium and Rs.30,000/- each to the children of the deceased i.e. claimants No.2 and 3 and funeral expenses to the tune of Rs.25,000/-. The claimants are entitled to get a sum of Rs.40,000/- towards loss of consortium. The claimants are further entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

Doing that the compensation comes out to be Rs.16,82,800/- (16,12,800 + 40,000 + 15,000 + 15,000). The Tribunal has awarded compensation of Rs.19,13,000/-. Therefore, the compensation gets reduced by Rs.2,30,200/- ( 19,13,000 – 16,82,800).

14. In that way, the impugned award is modified and compensation of Rs.16,82,800/- is awarded to the claimants payable by all the three respondents jointly and severally. The tribunal has awarded interest @ 8% p.a., which is slightly on higher side. The petitioners/claimants are entitled to get interest on this amount @ 7.5% p.a., from the date of filing of claim petition till actual realization. The mode of payment and apportionment of compensation shall remain the same as directed in the impugned award.

15. The appeal stands partly allowed.

18.05.2023

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**(H.S. MADAAN)**  
**JUDGE**

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| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |