

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

FAO-5561-2017(O&M)

Reserved on:-18.4.2023

Date of Pronouncement:-24.4.2023

National Insurance Company Ltd.

...Appellant

Versus

Jaspal Kaur and others

...Respondents

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

Present: Mr.B.S. Taunque, Advocate
for the appellant.

H.S. MADAAN, J.

CM-18081-CII-2017

For the reasons mentioned in the application, the same is allowed and delay of 28 days in filing of the appeal stands condoned.

FAO-5561-2017(O&M)

1. Briefly stated, facts of the case are that on account of death of one Joginder Singh in a motor vehicular accident, which took place on 9.11.2015 at about 2/2:30 p.m. in the area within the jurisdiction of Police Station Tripuri, Patiala statedly on account of rash and negligent driving of bus bearing registration No.PB-11AS-9555(hereinafter referred to as the offending bus) by Jarnail Singh – respondent No.1, legal representatives of such deceased, namely, widow – Jaspal Kaur, sons – Sunny Kumar and Honey Kumar and daughter Karamjit Kaur, all residents of village Kotla, Tehsil Sirhind, District Fatehgarh Sahib had

bought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against Jarnail Singh – driver, United Bus Service (Regd.), Patiala through its Proprietor/Partner – owner and National Insurance Company Ltd., Patiala insurer of the offending bus, claiming compensation.

2. After contest, the claim petition was allowed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the Tribunal) vide award dated 1.5.2017 by concluding that respondent No.1 Jarnail Singh was author of the accident by his rash and negligent driving of the offending bus in which Joginder Singh had suffered injuries, to which, he had succumbed. Accordingly compensation of Rs.9,52,000/- was awarded to the claimants with interest at the rate of 9% per annum from the date of filing of the claim petition till realization to the claimants payable by all the respondents jointly and severally and the apportionment and mode of payment are detailed in the award itself.

3. This award left the respondent No.3 - insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimants.

4. On being issued notice, respondents No.1 to 4, who were claimants before the Tribunal did not appear despite service.

5. I have heard learned counsel for the appellant besides going through the record.

6. Learned counsel for the appellant – insurance company has

confined his arguments with regard to the quantum of compensation stating that the Tribunal had taken the age of the deceased to be 55 years and his occupation as a Rehri Puller, assessing his monthly income as Rs.9,000/- per month. According to the learned counsel for the appellant – insurance company such income was taken to be on higher side and as per the minimum wages prevalent in the State of Punjab at the relevant time, even if a Rehri Puller is taken to be a semi skilled worker, such wages were Rs.7,715.65 paisa and that amount should have been taken to be monthly income of the deceased.

7. I do not find myself in agreement with learned counsel for the appellant insurance company in that respect. Minimum wages prevalent in the State at the time of accident provide some help and assistance to the Court in assessing income of a deceased if no evidence is coming forth with regard to the avocation and income of the deceased. But here, it is specific case of the claimants that deceased was working as a Rehri Puller earning Rs.25,000/- per month and during the course of their evidence, they had examined Harjit Singh, Proprietor of Diamond Furniture, Dharampura Bazar, Patiala as CW3, who had deposed that deceased Joginder Singh was employed with him and he used to ply Rehri earning Rs.25,000/- per month. The Tribunal had not placed reliance upon testimony of such witness for the reason that the witness had not produced any proof of employment of Joginder Singh with him and no income tax returns filed before Income Tax Department had been produced to show that the firm of witness was paying Rs.25,000/- per month to Joginder Singh during his life time for plying the Rehri. But occupation of Joginder

Singh as a Rehri Puller has been accepted. It may be pointed out that corroboration to the fact that Joginder Singh was in employment of manufacture of furniture comes out from the testimony of CW2 Sunny Kumar eye witness of the accident, who was non-else but son of the deceased, who stated that on the fateful day, Joginder, who was employed with Diamond Furniture, Dharampura, Patiala was deputed by his employer to go to Kamal Colony, Sirhind Road, Patiala for delivering a center-table to some party at Kamal Colony, Sirhind Road, Patiala and while he was returning after delivering of center-table then the accident had taken place. Therefore, it cannot be said that the Tribunal was not justified in assessing the monthly income of the deceased to be Rs.9,000/-. In my view on account of evidence available on the record, the Tribunal assessing income of the deceased to be Rs.9,000/- can certainly be not taken to be on higher side.

8. One thing, which needs to be pointed out is that the Tribunal had not made any addition to the income of the deceased on account of future prospects. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, when the deceased was self employed and was between the age group of 50 to 60 years, 10% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.9,000} + 900 = \text{Rs.9,900/-}$.

9. In this case the Tribunal has rightly deducted $\frac{1}{3}$ rd of the amount towards self-expenses in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.,**

2009(3) RCR(Civil)77. Doing that the dependency of claimants comes out to Rs.6,600/- per month(9900 -3300), annual dependency comes out to Rs.6600 x 12 = Rs.79,200/-.

10. The Tribunal has used multiplier of 11, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 79,200 x 11 = 8,71,200/-.

11. The Tribunal has further awarded a sum of Rs.1,00,000/- to the family members (children and family members other than wife) for loss of love and affection, deprivation of protection, social security etc. and Rs.50,000/- to the wife under the head loss of love and affection, deprivation and protection, social security etc. and Rs.10,000/-, under the head funeral and ritual expenses. However, as per the latest judgment **Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]**, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate. Thus the total compensation comes out to Rs.9,41,200/-(871200 + 40000 +15000 + 15000).

12. The Tribunal has wrongly awarded compensation of Rs.9,52,000/-. The same is reduced to Rs.9,41,200 /-. The rate of interest @ 9% per annum granted by the Tribunal is also on the higher side. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs. 9,41,200/-. Other terms and conditions in the original award shall

remain the same. The excess amount if received by claimants be returned by them otherwise the appellant – insurance company shall be entitled to recover it by filing an execution application before the Tribunal.

13. With such modification, the appeal is allowed partly with costs.

Since the main appeal stands allowed partly, the miscellaneous application(s), if any stand disposed of accordingly.

24.4.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No