

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

FAO-78-2017 (O&M)
Date of Decision: 14.02.2023

National Insurance Company Limited

..... Appellant

Versus

Balwant Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Rajneesh Malhotra, Advocate,
 for the appellant.

 Mr. Ajay Singla, Advocate,
 for respondent No.1.

 Mr. Dheeraj Kumar, Advocate, for
 Mr. H.P.S.Ishar, Advocate,
 for respondents No.2 and 3.

RAJBIR SEHRAWAT, J. (ORAL)

The present appeal has been filed by the appellant-Insurance Company against the award dated 16.07.2016 passed by the Motor Accident Claims Tribunal, SAS Nagar (Mohali) (in short, 'the Tribunal'), whereby an amount of Rs.5,52,500/- has been awarded as compensation with interest at the rate of 6% per annum on account of death of Gurdev Singh.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petition filed before the Tribunal.

The brief facts, as involved in the present case, are that on 11.11.2013, Gurdev Singh son of Bachan Singh, resident of Village Ghataur, Tehsil and District SAS Nagar (Mohali), Punjab, was returning to his house

on his scooter, which was being driven by him with due care and on correct side of the road. At about 2:30 P.M, a car bearing registration No.PB-02-AY-2088, being driven by respondent No.2 in a rash and negligent manner hit against the scooter of Gurdev Singh. Due to the accident, Gurdev Singh received grievous and multiple injuries. He died during the treatment at PGIMER, Chandigarh, on 11.11.2013 itself. Regarding the accident in question, an FIR No.172, dated 12.11.2013, under Sections 279 and 304-A of the Indian Penal Code was also registered at Police Station Kharar. Asserting these facts, the claimants, including the widow, the son and the daughters of the deceased, had filed the claim petition. However, ultimately, only the widow of deceased-Gurdev Singh was left as a claimant and the remaining claimants had withdrawn their claim petition. It was asserted in the claim petition that the deceased was aged about 70 years. He was a pensioner receiving a pension of Rs.19,088/- per month. After the death of Gurdev Singh, the pension has been stopped and only the family pension is being given, which is at an amount of Rs.9,500/-. On account of his death, the claimant has suffered a loss of Rs.9,500/- per month. Accordingly, the claim petition was filed.

Having heard learned counsel for the parties and having appreciated the evidence, the Tribunal assessed the loss of income from the deceased at Rs.9,500/- per month. Keeping in view the age of the deceased, multiplier of 5 was applied. Accordingly, the compensation of Rs.5,52,500/- was assessed; by granting compensation under conventional heads.

Arguing the case, learned counsel for the appellant has

submitted that on account of the accident in question, the aforesaid FIR was also registered. However, in the said FIR, the driver of the offending vehicle has been acquitted. This shows that the offending vehicle was not involved in the accident. Not only that, even the alleged eye-witness, who was examined in the claim petition, has not supported the version of the claimants in the criminal case. Therefore, his testimony has to be discarded even for the claim petition. Hence, it is submitted that neither the vehicle in question was involved in the accident nor there is any question of any negligence on the part of the offending vehicle. Learned counsel has also submitted that the income of the deceased has wrongly been assessed by the Tribunal.

On the other hand, learned counsel for the respondents have submitted that the claimant has duly proved her case before the Tribunal by examining two eye-witnesses. Although one of the eye-witnesses, when examined as a witness in criminal case, has resiled from his earlier statement, however, that could be because he might have been won over by the accused in the criminal case. It is clear from the fact that the said witness was declared hostile even by the public prosecutor. Moreover, the acquittal in a criminal case or any aspect of the same; is totally irrelevant for the purpose of decision of the claim petition. To buttress his arguments, learned counsel has relied upon judgment rendered by this Court on 06.01.2023 in **FAO No.5296 of 2022** titled as '**United India Insurance Company Limited Vs. Mamta and others**'. Learned counsel has further submitted that the income of the deceased has rightly been taken by the

Tribunal after deducting the family pension being received by the claimant. Hence, it is submitted that this appeal deserves to be dismissed.

Having heard learned counsel for the parties and perused the record, this Court does not find any substance in the arguments raised by the learned counsel for the appellant. It is well settled by now that the claim petition is to be decided by the Tribunal on the basis of evidence led before it by the respective parties. Registration of an FIR is not a *sine qua non* for maintaining a claim petition by the claimant. Otherwise also, any aspect of the criminal case is totally irrelevant for the purpose of decision of the claim petition. The criminal case; being only a collateral aspect, the same can be relied only to the limited aspect of corroborating the factum of the accident having taken place; and anything else relating to the criminal case or the acquittal therein is totally irrelevant. This has been so held by this Court in **Mamta's** case (*supra*).

Moreover, even if the criminal case is to be seen, though not required, still the perusal of the statement of the eye-witness recorded in the criminal case shows that he has resiled from the version earlier given by him. Therefore, possibility of he having been won over by the driver of the offending vehicle, for securing acquittal; cannot be ruled out. It is so suggested by the fact that the public prosecutor had to declare him as a hostile on account of suppressing certain facts while appearing as a witness before the criminal court. On that count also, the appellant cannot draw any benefit out of acquittal of a driver in the criminal case.

Moreover, so far as the loss of income on account of the death

of the deceased is concerned, it is not even in dispute that he was a pensioner receiving the pension of Rs.19,088/- per month. The Trial Court has taken as the loss of income by deducting therefrom the amount of family pension being received by the claimant. Therefore, no fault can be found even with the assessment of the income by the Tribunal.

No other argument was raised.

In view of the above, finding no merit in the present appeal and the same is dismissed.

All pending miscellaneous application(s), if any, stands disposed of; as such.

(RAJBIR SEHRAWAT)
JUDGE

14.02.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No