

FAO-648-2023 (O&M)

-1-

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

**CM-2305-CII-2023 IN/AND
FAO-648-2023 (O&M)
Date of Decision: 24.05.2023**

Reliance General Insurance Co. Ltd.

..... Appellant

Versus

Harpreet Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sachin Ohri, Advocate,
 for the appellant.

RAJBIR SEHRAWAT, J. (ORAL)

CM-2305-CII-2023

This is an application for condonation of delay of 16 days in re-filing of the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 16 days in re-filing of the appeal is condoned.

Main Case

The present appeal has been filed by the appellant-Insurance Company challenging the award dated 09.09.2022 passed by the Motor Accident Claims Tribunal, Patiala (in short, 'the Tribunal'), whereby the respondents No.1 to 3/claimants have been awarded an amount of Rs.22,98,000/- on account of motor vehicular accident death of Satnam 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 appeal, are that on 20.10.2019, Satnam Singh son of Ajit Singh, along with one Manjit Singh, was going from village Ghaggar Sarai towards his village Bhurimajra on a motorcycle of Bajaj make CT-100. The motorcycle was being driven by Manjit Singh and Satnam Singh was the pillion rider. A co-villager Gurnam Singh was following them on his Alto car. When they reached on link road of village Ghaggar Sarai at about 6:00 pm, then a car bearing registration No.PB-11-BU-5456 came from the opposite side. The said car was being driven in a rash and negligent manner by respondent No.4-Lakhwinder Singh. The said car hit the motorcycle on which Satnam Singh was the pillion rider. Due to the impact of accident, the motorcycle fell down and Satnam Singh received multiple injuries. The driver of the offending vehicle stopped his car by the side and came to Satnam Singh. Then Gurnam Singh, who was following on his Alto car, noted the registration number of the offending vehicle Alto car as PB-11-BU-5456. Satnam Singh, was got admitted to AP Jain Hospital, Rajpura, by his son and his other co-villagers. From there, he was referred to the GMCH, Sector 32, Chandigarh, where he scummed to the injuries during the treatment. Regarding this accident, an FIR No.140 dated 21.10.2019 has also been registered under Section 279, 337 and 304-A of the Indian Penal Code. Asserting these facts, Harpreet

Kaur, the widow, Kulwinder Singh son and Sanamdeep; the daughter of deceased-Satnam Singh filed a claim petition claiming therein that the deceased was of the age of 45 years. He was working as a carpenter. From there, he was earning Rs.50,000/- per month. Accordingly, an amount of Rs.50,00,000/- was claimed as compensation.

On being put to notice, respondents No.1 and 2 appeared through their counsel and filed joint written statement specifically denying the facts taken in the claim petition. The factum of the accident itself was denied. However, it was asserted that if there is any liability of the owner and driver of the offending vehicle, then the said vehicle was duly insured with respondent No.3-Insurance Company. Therefore, it was the liability of respondent No.3-Insurance Company to pay the compensation. The respondent No.3-Insurance Company also filed separate written statement asserting therein that the driver and owner both were implanted in the case only because the said vehicle was insured with the respondent No.3-Insurance Company. Otherwise, the said vehicle was not involved in the accident in question. It was further asserted that the driver and owner had earlier also been implanted in the similar cases, which were mentioned in the written statement. Accordingly, it was asserted that the claim petition filed by the claimants was collusive and based on wrong fact regarding involvement of the vehicle; as such. Beside this, the other routine objections were also taken.

To prove the assertions of the claimants; the widow of the

deceased herself stepped into the witness box as CW1 to prove the facts regarding the deceased, including the factum of him working as a carpenter and qua he earning Rs.50,000/- per month. CW2-Gurnam Singh was examined as an eye-witness of the accident in question. Beside this, documents Exhibits C1 to C7 were also placed on record. On the other hand, respondent No.3 has examined Sidharth Mishra, the alleged Investigator as RW1, Narinder Kumar as RW2, ASI Harpal Singh as RW3 and Harjit Singh, Assistant Record Keeper as RW4. Thereafter, since the respondent No.3-Insurance Company did not complete the evidence despite several opportunities, therefore, its evidence was closed by order of the Tribunal.

After appreciating the material on record, the Tribunal has assessed the income of the deceased to be Rs.15,000/- per month. Keeping in view the number of dependants, deduction to the extent of one-third has been applied. Future prospects at the rate of 25% have been added. Keeping in view the age of the deceased, the multiplier of 14 has been applied. Accordingly, the claimants have been held entitled to an amount of Rs.22,98,000/-, which includes the loss of consortium, funeral charges and loss of estate, besides the loss of income as per the criteria disclosed herein above. Challenging the said award, the present appeal has been filed by respondent No.3-Insurance Company.

Arguing the case, learned counsel for appellant-Insurance Company has submitted that the vehicle in question was not involved in the

accident at all. As per the investigation conducted by the Insurance Company, it was found that the vehicle was sold by original owner Naresh Kumar to one Jagdev Singh. The owner has even filed an application before the Tribunal to say that he never filed written statement and no power of attorney or any other document was filed by him before the Tribunal. Not only that, the owner has also asserted that he came to know that subsequently power of attorney qua the offending vehicle was executed in favour of Amrik Singh, in which Malkiet Singh was cited as a witness to the GPA. The owner also asserted that he never filed any application for release of the vehicle on superdari. Therefore, it is argued by the learned counsel that the owner himself has denied the involvement of the offending vehicle in the accident in question. After the denial by the owner qua all these transactions, the Insurance Company also got the signatures of the owner on these documents compared and the said comparison was placed on record before the Tribunal. The claimants have not proved the involvement of the vehicle in the accident beyond doubt. Still further, it is submitted by the learned counsel that the income of the deceased has wrongly been assessed at the rate of Rs.15,000/- per month. Rather, since no income of the deceased was proved on record, therefore, the minimum wages should have been taken as standard wages for assessment of the income of the deceased. Hence, the award passed by the Tribunal deserves to be modified.

Having heard learned counsel for the appellant, this Court does not find any substance in the arguments raised by the learned counsel for the

appellant. To prove their assertion qua the involvement of the vehicle and the vocation of the deceased, the claimants have examined the widow of the deceased-Satnam Singh. She has deposed while appearing as a witness before the Tribunal qua all the aspects asserted in the claim petition. She has duly proved on record that the deceased Satnam Singh was working as a carpenter on the date of accident, however, there is no documentary proof of the income of the deceased from his profession as a carpenter. So far as the involvement of the offending vehicle in question is concerned, the eye-witness of the accident has been examined by the claimants who has deposed as to the manner of the accident and qua the factum of the involvement of the offending vehicle in the accident. Despite cross-examination, nothing substantial could be extracted from him so as to impeach the credit of his testimony.

To deny the involvement of the vehicle, the owner has filed a written statement and is also stated to have filed application before the Tribunal to disown the written statement and other documents; however, he has failed to appear as a witness before the Tribunal. Therefore, the assertions made by him in the written statement have gone totally unsubstantiated and, therefore, an adverse inference is bound to be drawn against him. This is in contrast to the effort made by the claimants in examining the eye-witness of the accident. So far as the examination of the alleged investigator of the Insurance Company is concerned, that is totally irrelevant fact. He was not eye-witness to anything. He only tried to gather

certain information, based upon some information allegedly supplied by the owner of the vehicle. However, as mentioned above, since the owner of the vehicle himself has not appeared as a witness in the witness-box, therefore, the alleged assertions made by him before the alleged investigator could not have, otherwise also, been proved on record. Moreover, the alleged report of the investigation is a self-created document of the respondents in the claim petition. Therefore, the said document cannot be given any leverage; as such. Accordingly, this Court finds that the Tribunal has rightly recorded the findings qua involvement of the offending vehicle in the accident.

So far as the argument qua income of the deceased is concerned, even on that count, this Court does not find anything in the argument of the learned counsel for the appellant to be of any significance. The minimum wages are not of universal application; per se. Even on the statute, they are applicable only qua scheduled employments. Otherwise also, qua assessing the income of the deceased; for the purpose of the motor vehicle accident cases, minimum wages are not to be applied in every case and in routine. The said standard of minimum wages can be applied only if there is not even a vocation of the deceased proved on record. Once the vocation of the deceased is proved on record, then the average earning from the said avocation has to be taken as the income of the deceased and not the minimum wages prescribed under the Minimum Wages Act. Moreover, there is nothing placed on record before the Tribunal by the respondent No.3-Insurance Company to show as to what were the minimum wages for

FAO-648-2023 (O&M)

-8-

carpenter on the date of accident. Hence, this argument of the learned counsel for the appellant also has to be noted only to be rejected.

No other argument was raised by the learned counsel for the appellant.

In view of the above, finding no merit in the present appeal, the same is dismissed. The statutory amount deposited for filing of the appeal be transferred to the Tribunal for onward payment to the claimants and to be adjusted towards the compensation; as such.

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

24.05.2023
adhikari

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No