IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

119 **FAO No.1136-2020 (O&M).**
Date of decision: 19.03.2024

New India Assurance Company Limited ....Appellant.

VERSUS

Jaspal Kaur and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Aseem Aggarwal, Advocate for the appellant.

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Sukhvinder Kaur, J.

1. By way of this appeal, the appellant-Insurance Company has challenged the award dated 27.11.2019 passed by learned Motor Accident Claims Tribunal, Sangrur, vide which the claim petition titled as *Jaspal Kaur and others Vs. Sukhpal Singh and another*, filed under Sections 166 of the Motor Vehicles Act was partly allowed and compensation of Rs.14,35,000/- alongwith interest @ 6% per annum was awarded.

2. Brief facts of the case are that on 13.03.2019 deceased Labh Singh was going to his village Kamalpur, Teshil Dirba, District Sangrur on his motorcycle, after attending the marriage at village Kalbanjara. He was driving the said motorcycle at a normal speed on the correct side of the road and was being followed by Jaswinder Singh son of Nahar Singh, resident of Village Kamalpur, Tehsil Dirba, District Sangrur on his car. When at about 8.30 P.M., he reached near the Hari Om Palace, village Rogla, Police

Station Dirba, then a Ford Figo car bearing registration No.PB-13AD-6192 being driven by respondent No.1 in a rash and negligent manner came there and struck against the motorcycle of deceased. Resultantly, he received multiple grevious injuries on his person and was taken to CHC, Kaurian and after seeing the serious condition he was referred to the Civil Hospital, Sangrur, but on the way to Civil Hospital, Sangrur deceased succumbed to the injuries. Motorcycle of the deceased was badly damaged in the accident. Respondent No.1 ran away from the spot alongwith Ford Figo car bearing registration No.PB-13AD-6192. Thereafter, on the statement of Jaswinder Singh a case FIR No.19 dated 14.03.2019, under Sections 304A, 279, 427 IPC was registered at Police Station Dirba against respondent No.1.

3. It was submitted that Labh Singh was 44 years old and was hale and hearty at the time of accident. He was running a shop and doing the work of Halwai in the marriages and earning Rs.35,000/- per month. The claimants were fully dependent upon the income of deceased. Due to untimely death of deceased, the claimants have been deprived of the love and affection, care and dependency of the deceased for their entire life. They came under the mental shock and agony. It was alleged that the deceased was very active and energetic and the future prospects of the deceased were very bright. The claimants had great love and affection with the deceased. The claimants No.2 and 3 are unmarried and are of marriageable age. Claimant No.2 is doing GNM Course from Sunam. Hence, the claimants had sought compensation of Rs.40,00,000/- from the

respondents alongwith interest.

4. Upon notice of the claim petition, respondents No.1 and 2 appeared and filed their separate written statements. Respondent No.1 took the legal objections regarding maintainability, locus standi, cause of action and concealment of material facts. On merits, it was submitted that no accident has been taken place as alleged the claimants with the Ford Figo car bearing registration No.PB-13AD-6192. AT the time of alleged accident, the aforesaid car was insured with respondent No.2 New India Assurance Company Limited. Respondent No.1 was having valid driving license at that time.

5. In the written statement filed by respondent No.2 also it was denied that the accident had taken place with the Ford Figo car bearing registration No.PB-13AD-6192. It was alleged that the FIR had been wrongly registered as a result of connivance between respondent No.1 and the claimants. All the material averments made in the claim petition were denied.

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

> 1. Whether on 13.03.2019 at about 8.30 P.M. near Hari Om Palace, village Rogla, P.S. Dirba the respondent No.1 Sukhpal Singh drove the offending Ford Figo car bearing registration No.PB-13AD-6192 in a rash and negligent manner and thereby caused the death of Labh Singh by his aforesaid act? OPP
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> 2. If issue No.1 is proved in affirmative, whether the claimants are entitled to receive compensation from the

respondents alongwith interest, if any & if so, at what rate? OPP?

3. Whether the claim petition is not maintainable in the present form? OPR

4. Whether the claimants have not come to the Tribunal with clean hands and have suppressed the true and material facts from the Tribunal? OPR

5. Whether the claimants have no locus standi and cause of action to file the present claim petition? OPR

6. Whether the offending vehicle was being plied without registration certificate? OPR

7. Whether the driver of the offending vehicle Ford Figo car bearing registration No.PB-13AD-6192 was not having a valid driving license at the time of alleged accident? OPR

8. Relief.

7. In order to prove their case, claimant No.1 Jaspal Kaur herself stepped into witness box as CW1 and also examined Jaswinder Singh, author of FIR and eyewitness of the accident as CW2 and Gurjit Singh as CW3. They also tendered certified copy of report under Section 173(2) of Cr.P.C. as Ex.C2, certified copy of charge sheet as Ex.C3, certified copy of postmortem report as Ex.C4, certified copy of FIR as Ex.C5 and closed the evidence on behalf of the claimants.

8. In order to rebut the evidence of the claimants, respondent No.1 has tendered into evidence original Insurance policy as Ex.R1, photostat copy of driving licence of respondent No.1 as Ex.R2, photostat copy of Registration Certificate of the car as Ex.R3 and closed the evidence on behalf of respondent No.1.

9. Respondent No.2 tendered into evidence copy of Aadhar Card of Labh Singh since deceased as Mark A, photostat copy of statement of complainant as Mark B, photostat copy of memo Mark C and closed the evidence on behalf of respondent No.2.

10. After appreciating the evidence on record, the Tribunal reached at the conclusion that the accident in question in which deceased Labh Singh lost his life was caused due to rash and negligent driving of the offending vehicle by respondent No.1.

11. Thereafter, the Tribunal took the age of Labh Singh as 48 years, as in the Aadhar Card date of birth of the deceased was mentioned as 01.01.1971. Then by considering that though as per the claimants deceased was running a shop and doing the work of Halwai in marriage parties and was earning Rs.30,000/- to Rs.40,000/- per month, yet as there was no exact proof regarding income of the deceased, the Tribunal assessed the monthly income of the deceased as Rs.10,500/- by taking him as a skilled labourer. As deceased was having three dependents, after deducting 1/3rd of his income towards his personal living and other expenses, his contribution towards the family was taken to the extent of 2/3rd of his income, and the same was taken as Rs.7,000/- per month. Then keeping in view the ratio of law laid down in ***National Insurance Company Limited VS. Pranay Sethi, 2017(4) RCR (Civil) 1009*** 25% of the income was added as future prospects and it was held that the monthly income of the deceased which he must have been contributing towards his dependants comes to Rs.8750/- per

month (Rs.7,000/- established income plus 25% future prospects i.e. Rs.1750/-) Then as per ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 (3) R.C.R (Civil) 77,*** the deceased being in the age group of 46 to 50, the multiplier of '13' was applied and the total compensation to which the claimants were entitled was assessed as Rs.13,65,000/-. The claimants were also held entitled to Rs.15,000/- towards loss of estate; Rs.40,000/- towards loss of consortium to claimant No.1 and Rs.15,000/- on account of funeral expenses. Thus, it was held that the claimants were entitled to total amount of compensation of Rs.14,35,000/-to be paid by both the respondents jointly and severally. Accordingly, the claim petition was partly allowed.

12. Respondent No.3 has been directed to make the payment of the compensation to the claimants within a period of two months from the date of award failing which the claimants shall be entitled to the interest @ 6% per annum on the awarded amount from the date of the filing of the claim petition till the actual realization of the entire amount.

13. The appellant-Insurance Company being aggrieved by the impugned award dated 27.11.2019 has filed the present appeal.

14. I have heard learned counsel for the appellant and have gone through the relevant record.

15. At the outset, it has been submitted by learned counsel for the appellant that the Tribunal has misread and misconstrued the evidence on record. The Tribunal has ignored the fact that the alleged eyewitness

Jaswinder Singh was nephew of deceased Labh Singh and was an interested witness. Apart from that, claimants have failed to examine any other eyewitness to the accident. He has further contended that the Tribunal has also failed to appreciate the fact that the said witness got the FIR registered after one day wherein neither the name of the driver nor number or description of the alleged offending vehicle were given. So the insured vehicle has been roped in just to grab the compensation. He has also submitted that the Tribunal has awarded the compensation which is quite on the higher side and has wrongly taken the monthly income of deceased as Rs.10,500/- per month.

16. In order to prove rash and negligent driving of the offending vehicle by the driver/ respondent No.1, the claimants have examined CW2-Jaswinder Singh, who was an eyewitness to the accident. The perusal of his testimony reveals that he has given a detailed account regarding manner of happening of the accident due to rash and negligent driving of respondent No.1, resulting in death of Labh Singh. Besides that claimants have also produced on record certified copy of final report (Ex.C2) submitted by the police as envisaged under Section 173(2) Cr.P.C., to substantiate their plea that respondent No.1 was facing the trial for commission of offences under Sections 279, 304-A and 427 IPC for driving the offending vehicle rashly and negligently and for causing death of Labh Singh.

17. To rebut this evidence of the claimants, the driver-cum-owner/ respondent No.1 did not bother to appear as his own witness to deny that he

was not the author of the accident, for which adverse inference is to be drawn against him.

18. It is trite law that in the motor vehicle accident claim cases, the burden of proof on the claimants, is not that heavy as is required to prove a criminal charge for rash and negligent driving of the vehicle. Nothing has been brought on record to show that respondent No.1 had made any complaint to concerned SHO or higher police officers regarding his false implication.

19. So from the testimony of CW2, registration of FIR, presentation of challan under Section 173(2) Cr.P.C. against respondent No.1, and non appearance of respondent No.1 as his own witness, the Tribunal has rightly held respondent No.1/ driver of offending vehicle liable for causing death of Labh Singh in the accident in question, by driving the offending vehicle in a rash and negligent manner. The evidence on record has been rightly appreciated by the Tribunal on the basis of preponderance of probabilities.

20. So far as, the quantum of the compensation is concerned, the Tribunal has rightly taken the income of deceased as Rs.10,500/- per month by considering him as a skilled labourer. By taking into account number of dependants as three, 1/3rd income of deceased was rightly deducted towards his personal living and other expenses and his contribution towards the family to the extent of 2/3rd of his income, was rightly taken as Rs.7,000/- per month. Then keeping in view the ratio of law laid down in ***Pranay***

Sethi's case (supra), 25% of the income was rightly added as future prospects and it was rightly held that the monthly income of the deceased which he must have been contributing towards his dependants comes to Rs.8750/- per month. As per ***Smt. Sarla Verma's case (supra),*** the multiplier of '13' was also rightly applied. The amount of Rs. 70,000/- has also been rightly awarded under the conventional heads. Thus, just and fair compensation has been awarded by the Tribunal which is not on the higher side as alleged by the appellant-insurance company and does not call for any interference.

21. In view of the above, there is no merit in the present appeal and the same is dismissed being devoid of any merits.

22. All pending applications, if any, stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

19.03.2024
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Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No