116

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3739-2023 (O&M)
Date of Decision : 29.10.2024

Oriental Insurance Company Limited ... Appellant(s)

Versus

Mohinder Kaur @ Mahinder Kaur & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. Ashwani Arora, Advocate for respondent Nos.1 and 2.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the appellant-Insurance Company aggrieved by the award dated 24.01.2023 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal').

2. Brief facts relevant to the present *lis* are that on 18.05.2019 at about 12.15 am, the deceased - Navdeep Singh - was going from Sector 22 Chandigarh to Sector 49 Chandigarh in his car at a slow speed. Akhilesh Kanwar, Abhinav, Jyoti and Bhavya were the other occupants of the car. When they reached Traffic Light Point near Kiran Cinema, a Thar Jeep bearing Registration No.PB-16-E-0099 (hereinafter referred to as 'offending vehicle') came at a fast speed from the side of Sector 22-A, Chandigarh and struck against the car and dragged it for distance. All the occupants of the car received serious injuries. The deceased - Navdeep Singh - was taken to PGIMER in a PCR vehicle where he succumbed to his injuries. The offending vehicle was being driven in a rash and negligent manner by Prince Karan

Singh (respondent No.3 herein). The accident took place due to the rash and negligent driving of the offending vehicle. The FIR was also registered. The claim petition was filed by the parents of the deceased. On notice, the owner and driver of the offending vehicle (respondent Nos.3 and 4 herein) filed their written statement wherein it was averred that the accident did not take place because of the negligent act of the driver of the offending vehicle (respondent No.3 herein). In the written statement filed by the appellant-Insurance Company the plea taken was that the claim petition was vague, incomplete and did not disclose any cause of action. It was further averred that no such accident took place and further that the driver of the offending vehicle (respondent No.3 herein) did not have a valid and effective Driving Licence, Registration Certificate and the other documents. On the basis of the pleadings, the following issues were framed :

1. Whether Navdeep Singh died due to injuries suffered in road accident on 18.5.2019 due to rash and negligent driving of Jeep bearing No.PB-16-E-0099 by respondent No.1 as prayed for ? OPP
2. Whether the claimants are entitled to compensation, if Yes what amount and from whom ? OPP
3. Whether the claim petition is not maintainable ? OPR
4. Whether the driver of offending vehicle was not holding a valid and effective driving license at the time of accident ? OPR3

5. Whether the offending vehicle was being driven in contravention of the terms and conditions of the Insurance Policy ? OPR3

6. Whether the claim petition has been filed by the claimants in collusion with respondent No.1 and 2 ? OPR3

7. Relief.

3. The Tribunal awarded the following compensation :

1.	Annual income= 25000 x 12	Rs.3,00,000/-
2.	Future prospects @ 40% of annual income.	Rs.1,20,000/-
3.	Total Annual Notional Income= Annual income + future prospects	Rs.4,20,000/-
4.	Deductions towards personal expenses = total	Rs.2,10,000/-
5.	Multiplicand = Total Notional Annual Income-	Rs.2,10,000/-
6.	Multiplier	17
7.	Compensation for loss of dependency= Multiplicand x Multiplier.	Rs.35,70,000/-
8.	Compensation for Loss of consortium for dependent= Two x 44,000/-	Rs.88,000/-
9.	Compensation for Loss of estate	Rs.16,500/-
10.	Compensation for Funeral expenses	Rs.16,500/-
	Total :	**Rs.36,91,000/-**

4. Learned counsel for the appellant-Insurance Company would contend that the author of the FIR did not step into the witness box nor did any of the other occupants of the car step into the witness box. It is further the contention that the driver of the offending vehicle (respondent No.3 herein) was acquitted in the criminal case. Secondly, the contention of the learned counsel is that the income of the deceased has been assessed on the higher

side and as per the Income Tax Returns the income from business was reflected as being Rs.1,45,640/- per annum. It is further the contention of the learned counsel for the appellant-Insurance Company that the interest awarded by the Tribunal is also on the higher side.

5. *Per contra* the learned counsel for respondent Nos.1 and 2 has contended that the Police arrived at the spot where the accident took place and infact the deceased was taken to PGIMER in a PCR vehicle. It is further the contention that both the vehicles were found at the spot in a damaged condition and the offending vehicle was found toppled over. The other injured occupants were also taken to the hospital. It is further the contention that the deceased was an Uber Driver. It is further the contention of the learned counsel that once the vehicles were found at the spot, the question of the accident not having taken place would not arise. The learned counsel for respondent Nos.1 and 2 has further contended that in the Income Tax Returns the income has been reflected under two heads; (i) income from the business or profession i.e. Rs.1,45,640/- and (ii) Income from the other sources i.e. Rs.1,24,560/- and it has been specified that the other sources from income is from renting and hiring of the taxi. The learned counsel would further contend that in the present case the income from other sources would also have to be taken into account as the family is no longer getting the income from renting and hiring of the taxi as the same was totally damaged in the accident. The learned counsel has further contended that the Bank official PW3 had stepped into the witness box and had deposed that Rs.13,000/- was being paid towards the loan availed by the deceased - Navdeep Singh - for purchase of the car which was being driven as an Uber Taxi.

6. I have heard the learned counsel for the parties.

7. In the present case the accident took place on 18.05.2019. Both the vehicles were found at the spot in a damaged condition. It is not the case of the appellant-Insurance Company that respondent No.3 herein was not the driver of the offending vehicle or that respondent No.4 herein was not the owner of the offending vehicle. Infact, the argument raised by the learned counsel for the appellant-Insurance Company is that no such accident took place as neither the author of the FIR nor the other occupants stepped into the witness box. In the present case, both the vehicles were found at the spot by the Police, hence, the question of the accident not having taken place would not arise. It is not the stand of the appellant-Insurance Company in its written statement that it was a case of contributory negligence, rather it had denied the factum of the accident. The driver of the offending vehicle (respondent No.3 herein) also chose not to step into the witness box, he would have been the best person to depose regarding the manner in which the accident took place. However, in the absence of the same no fault can be found with the finding given by the Tribunal that the accident took place due to the rash and negligent driving of the driver of the offending vehicle. Hon'ble Supreme Court in the case of **Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr. [(2020) 13 SCC 486]** has held as under :

> *"It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while*

> *doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."*

8. The second argument of the learned counsel that the income as well as the interest has been assessed on the higher side also deserves to be rejected. In the Income Tax Returns it has specifically been mentioned that the income from business or profession was Rs.1,45,640/- and the income from the renting and hiring of the taxi was Rs.1,24,560/-. Admittedly the car which the deceased - Navdeep Singh - was driving was totally damaged and there would be no income from renting and hiring of the taxi and hence the same would have to be included while computing the income of the deceased. It has also come on the record that Rs.13,000/- was being paid by the deceased towards the loan availed for purchase of the car. In the present case the Tribunal has awarded interest @ 8% per annum which cannot be termed to be on the higher side. In view thereof, no fault can be found with the finding recorded by the Tribunal regarding the amount of the compensation awarded as well as the interest @ 8% per annum.

9. In view of the above, I do not find any merit in the present appeal which is accordingly dismissed. Pending applications, if any, also stand disposed off.

29.10.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO