

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.138

Case No. : FAO No.784 of 2024 (O&M)

Date of Decision : February 15, 2024

United India Insurance Company Limited,
Bathinda Appellant
vs.
Nachhatar and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Harinder Kumar, Advocate
for the appellant.

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GURBIR SINGH, J. :

1. **CM No.2885-C-II of 2024** : This is application under Section 151 CPC for condonation of delay of 36 days in re-filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 36 days in re-filing the present appeal is condoned. The application stands disposed of.

2. **Main Appeal** : This appeal has been filed against Award dated 21.08.2023, passed by learned Motor Accident Claims Tribunal, Sangrur (for brevity – the Tribunal). The learned Tribunal, on the basis of evidence recorded in the case, came to the conclusion that deceased Pargat Singh died in the motor vehicular accident caused by respondent no.6 – Pargat Singh son of Kaka Singh, while driving offending vehicle bearing registration No.PB-13-BL-6624 in rash and negligent manner. Respondent no.1 being

mother, respondent no.2 being widow and respondents no.3 and 4 being minor children of deceased, were dependent upon him, who was 39 years old at the time of his death. His income was assessed as Rs.6,29,462/- per annum. Keeping in view the fact that there were four dependents, 1/4th of his income was ordered to be deducted as personal expenses. 40% of his income was added as future prospects. Multiplier of 15 was adopted. A sum of Rs.15,000/- each was granted as loss of estate and funeral expenses. A sum of Rs.40,000/- was granted as loss of consortium. Total compensation of Rs.71,51,455/- was awarded along with interest @ 7% per annum. The driver, owner and Insurance Company were held liable to pay the amount of compensation jointly and severally.

3. Learned counsel for the appellant has argued that the learned Tribunal has failed to appreciate the fact that mother of the deceased, in her cross-examination, has admitted that she was already getting pension to the tune of Rs.30,000/-. So, granting her further compensation is not sustainable in the eyes of law. It has further been argued that the compensation as well as interest granted to the claimants are on higher side. Therefore, the impugned Award be set aside and the present appeal be allowed.

4. Heard.

5. The claimants examined CW-2 Manmohan Singh, an eye-witness of the accident, who duly proved that accident was caused by rash and negligent driving of the offending vehicle. He also negated the argument of respondents regarding non-wearing of helmet by the deceased as he deposed that the deceased was wearing turban at the time of accident,

and therefore, there was no question of wearing helmet. Moreover, in the written statement filed by appellant Insurance Company, it has been pleaded that no such alleged accident ever took place but on the other hand, it was stated that the accident occurred due to contributory negligence of deceased. So, the appellant Insurance Company cannot be allowed to blow hot and cold in the same breath. Further, no evidence was brought on record to prove alleged contributory negligence.

6. The proceedings before the learned Tribunal are civil in nature and facts have been proved on the basis of preponderance of probability. The learned Tribunal has correctly held that the accident was caused by rash and negligent driving of the offending vehicle. As far as the contention that family pension, which is being paid to the widow of deceased, is to be deducted from assessing the amount of monthly income, the same cannot be accepted. In the case titled **R. N. Manjula vs. Noorulla Sanaulla and others – Law Finder Doc Id # 818080**, it has been held by Karnataka High Court as under :-

“10. It is trite that the family pension received by the claimant-wife as the dependent of the deceased is for the contribution in the service rendered by the deceased employee to which the claimant is legally entitled even otherwise of the accidental death of the deceased. The amount received towards family pension would not fall in the periphery of the Act to deny the compensation for the dependents while awarding compensation under the Act. There is no co-relationship between the two and family pension amount paid to the

family cannot be deducted while computing compensation awarded to the claimant.”

7. The Insurance Company cannot escape its liability to pay compensation to the claimants in the present case just by taking plea of family pension being granted to one of the claimants. The impugned Award is completely in accordance with law and there is no ground to interfere in the lawful order passed by the learned Tribunal. The appeal is without any merit and is therefore, dismissed in limine.

8. Pending applications, if any, shall stand disposed of along with this judgment.

February 15, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.