

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

FAO No.233 of 2024 (O&M)

Date of Decision: 07.02.2024

The New India Assurance Company Ltd.

...Appellant

Versus

Davinder Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Deepak Suri, Advocate and
Mr. Brij Bhushan Sharma, Advocate
for the appellant-Insurance Company.

MEENAKSHI I. MEHTA, J. (Oral)

Feeling aggrieved and dissatisfied with the Award passed by learned Motor Accident Claims Tribunal, Palwal (for short 'the Tribunal') on 02.11.2023, whereby respondents No.1 to 4-claimants (here-in-after to be referred as 'the claimants') have been granted compensation to the tune of Rs.29,40,700/-, along-with interest @ 7% per annum from the date of filing of the claim petition till its realisation, on account of the death of one Pooja Devi, the appellant-Insurance Company has chosen to prefer the instant appeal to lay challenge to the same.

2. Bereft of the unnecessary details, the facts, as emanating from the perusal of the file and culminating in the filing of this appeal, are that the claimants, i.e the husband, son and the parents-in-law of the above-named deceased respectively, filed a claim petition for seeking compensation of Rs.80 (eighty) lac from respondent No.5-driver, respondent No.6-registered

owner, respondent No.7-lessee and the appellant-insurer, of the Bus having registration No.PB-11-CF-9508 (for short 'the offending Bus') and averred therein that on the fateful day, i.e 03.06.2018, claimant No.1, along-with the deceased and claimant No.2, was going towards Bathinda Cantonment side on his motor-cycle bearing registration No.HR-25-C-4930. In the meantime, at about 11.00 A.M, the offending Bus came from the backside and it was being driven in a rash and negligent manner at a high speed and it hit the afore-said motor-cycle. The deceased sustained injuries in this accident and finally, she succumbed to the same.

3. It is worth-while to point it out here that as mentioned in the impugned Award, respondent No.7 (arrayed as respondent No.2-A in the claim petition) had been given up before the Tribunal, vide the statement as recorded on 20.07.2019. Respondents No.1 and 2 filed their joint written-statement and respondent No.3 filed separate written-statement, contesting the claim of the claimants therein, on various grounds. Then, the parties had been put to the trial by framing the issues on 25.11.2019 and after appreciating and evaluating the evidence as led by them on the record and hearing their respective counsel, the Tribunal allowed the claim petition and granted compensation to the claimants vide the impugned Award, as already indicated in the opening para of this judgment.

4. I have heard learned counsel for the appellant-Insurance Company in the present appeal, at the preliminary stage and have also gone through the file carefully.

5. Learned counsel for the appellant contend that the claimants have neither examined the author of the FIR, as registered qua the accident

in question nor any independent eye-witness of this accident, as their witnesses and moreover, the deceased had been employed with the MKM Group of Colleges just 02 (two) months before the said accident and thus, she was not a regular employee but vide the impugned Award, the Tribunal has erroneously granted compensation to the claimants, without taking the above-discussed material and crucial facts, into consideration and in these circumstances, it becomes quite explicit that the said Award is not legally sustainable and hence, it deserves to be set-aside.

6. However, the afore-raised contentions do not hold much water because though the claimants did not examine the informant, who got the above-said FIR lodged, as their witness but the Tribunal has categorically observed in Para No.13 in the impugned Award that claimant No.1, who was accompanying the deceased on the afore-referred motor-cycle at the time of the above-said accident, appeared in the witness-box as PW-2 and tendered his affidavit wherein he had deposed regarding the circumstances in which this accident had taken place, meaning thereby that he was an eye-witness to the said accident and the mere factum of his being the husband of the deceased, in itself, does not suffice at all to paint his entire testimony with black colour, especially in the circumstances when the Tribunal has mentioned in Para No.14 in the Award that a criminal case was registered against the respondent-driver under Sections 279, 427 and 304-A IPC and he was facing trial for the same and has, further, observed in Para No.15 therein that he (respondent-driver) had not stepped into the witness-box to make any depositions and thus, no evidence was available on the file to show that he had ever filed any protest petition before the higher authorities

about his false implication and the respondent-owner also did not appear as witness to make his depositions for denying the involvement of the alleged offending Bus in the afore-said accident.

7. Then, even if the deceased had joined the job with the above-referred Group of Colleges only 02 months prior to her death and was not on their regular Rolls, even then, the fact remains that as mentioned in Para No.19 in the impugned Award, PW-3 Mohd. Hasin, the Clerk in the afore-named Institution, had brought the relevant record and had deposed qua the employment of the deceased as Assistant Professor and her salary being Rs.15,000/- per month. The very factum of her (deceased's) employment as Assistant Professor speaks volumes of the fact that she was a well-qualified person and therefore, the calculation of the amount of compensation on the basis of her above-said monthly salary, is perfectly legal and justified.

8. As a sequel to the fore-going discussion, it follows that the impugned Award does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the same is upheld and the appeal in hand, being *sans* any merit, stands dismissed accordingly.

07.02.2024
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: No