IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3205-2024 (O&M)
Reserved on :-08.09.2025
Pronounced on :-16.09.2025

National Insurance Company Limited

… Appellant

Versus

Aarti and Others

... Respondents

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Punit Jain, Advocate
for the appellant.

Mr. S.S. Gill, Advocate for
Mr. Yajat Gill, Advocate
for respondents No.2 to 3 and 5.

Mr. Jitender Singh Kundu, Advocate
for respondent NO.7.

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VIRINDER AGGARWAL, J.

1. The present appeal has been filed by appellant-respondent No.3 challenging the award dated 30.01.2024 passed by the Motor Accident Claims Tribunal, Kaithal, in a claim petition instituted by the respondent-claimant. By the impugned award, the Tribunal allowed the claim petition and directed payment of compensation amounting to ₹67,57,219/- along with interest at the rate of 6% per annum in favor of the claimant. The award was made on account of the death of Hemant Kumar, who tragically lost his life

in a motor vehicle accident that occurred on 24.04.2018. The claim petition had been filed on the ground that the deceased was traveling in a motor vehicle which met with an accident due to the alleged negligent driving, and the compensation was assessed to cover the loss suffered by the legal heirs of the deceased, including his wife, children, and parents.

2. Briefly stated, the claimants, being the wife, children, and parents of the deceased Hemant Kumar, filed the present claim petition following a fatal motor vehicle accident that occurred on 24.04.2018. It is alleged that the deceased, accompanied by his friends, was traveling from Dehradun to Haridwar in a car bearing registration No. HR08-X-1968, driven by respondent No.1 in a rash and negligent manner. Upon reaching near Village Chhidarwala, the vehicle allegedly overturned while attempting to avoid a motorcyclist, causing grievous injuries to Hemant Kumar and his co-passengers, namely Jatinder, Sandeep, and Harsh. The deceased succumbed to his injuries in the accident. At the time of his death, Hemant Kumar was aged 35 years and was engaged in business as a shopkeeper, earning a monthly income of ₹60,000/-. The vehicle involved in the accident was owned by respondent No.2 and insured with the respondent Insurance Company through Maruti Insurance.

2.2 On these facts, the claimants sought compensation for the death of Hemant Kumar, claiming compensation along with interest, holding respondent No.1, the driver, responsible for rash and negligent driving, and respondent No.2 along with the Insurance Company liable for compensation under the provisions of the Motor Vehicles Act.

3. Respondents No.1 and 2 vehemently opposed the claim petition, asserting that the same was neither maintainable nor founded on truthful allegations. They contended that respondent No.1 had exercised due care and caution while driving and was in no way responsible for the occurrence of the accident.

4. Appellant-respondent No.3 contested the claim petition on multiple grounds, asserting that it was not maintainable. It was contended that no accident occurred as alleged due to any rash or negligent driving on the part of respondent No.1. Reference was made to DDR No.24 dated 25.04.2018, which reportedly indicated that the vehicle overturned suddenly without any fault of the driver. It was further argued that no specific allegations of rash or negligent driving had been made, rendering the claim petition non-maintainable under Section 166 of the Motor Vehicles Act. Additionally, it was submitted that the deceased may have sustained injuries elsewhere, the petition suffered from mis-joinder and non-joinder of necessary parties, and the offending vehicle was allegedly being driven in violation of the insurance policy terms and without a valid registration certificate. The appellant-respondent also contended that the claim petition appeared collusive between the claimants and the other respondents, and that the interest claimed was highly excessive.

5. From the pleading of the parties, following issues were framed:-

1. Whether Hemant Kumar had expired in an accident which took place on 24.04.2018 at about 07:30 p.m., in the area of Police Station, Raiwala, District Dehradun on account of rash and negligent driving of respondent No.1 while driving the offending car bearing registration No.HR08X1968? OPP

2. If issue No.1 is proved, then what amount of compensation, the claimants are found entitled to and from whom? OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Whether the claimant has no locus standi to file the present petition? OPR
5. Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPR
6. Whether the claimant is estopped by his own act and conduct from filing the present petition? OPR
7. Relief

6. Both parties were provided ample opportunity to lead evidence and present their respective contentions before the learned Tribunal. After a detailed consideration of the pleadings, evidence, and arguments advanced by the parties, the Tribunal passed the impugned Award, allowing the claim petition and directing compensation in favor of the claimants. Dissatisfied with the findings and the relief granted, the appellant-Insurance Company filed the present appeal challenging the Award.

7. Notice of motion was duly issued in the appeal proceedings, upon which the respondents-claimants appeared, actively participated, and contested the appeal by filing their responses and submissions.

8. The appellant has challenged the Award on several grounds, contending that the finding of the learned Tribunal holding the driver of the insured vehicle to be rash and negligent is unsustainable in light of the DDR entry marked as Ex.R1. It was pointed out that Nitin, the brother-in-law of the deceased, had lodged the DDR immediately after the accident, which specifically recorded that the vehicle suddenly overturned and that no person was at fault. The appellant further contended that no FIR was lodged in

connection with the accident, and the Tribunal committed a material illegality by relying on oral testimony of witnesses while disregarding the initial account recorded in DDR Ex.R1. Additionally, the appellant argued that the quantum of compensation awarded was grossly excessive, criticizing the Tribunal's approach of assessing the deceased's income solely on the basis of the last income tax return, whereas it should have been determined by averaging the returns available on record. It was also submitted that Hemant Kumar, being the real brother of the insured, stepped into the shoes of the vehicle owner and, therefore, could not be treated as a third-party claimant. Finally, the appellant challenged the rate of interest awarded by the Tribunal as being disproportionately high.

9. On the other hand, learned counsel for the respondent contended that the learned Tribunal was justified in discarding and disbelieving the account recorded in DDR Ex.R1. He emphasized that an injured eye-witness appeared in court and categorically testified that the accident occurred due to the rash and negligent driving of respondent No.1, the driver of the insured vehicle. He further submitted that the Tribunal had correctly quantified the compensation, and the rate of interest awarded was on the lower side, reflecting a balanced approach. In view of these factors, the counsel argued that there is no valid ground for interference with the Tribunal's award in the present appeal.

10. Nitin Kumar, the brother-in-law of the deceased Hemant Kumar, lodged DDR Ex.R1, stating that when the vehicle reached near Chhidarwala Kali Temple, it became uncontrollable and overturned. The car was being driven by Gaurav, son of Ravinder Kumar, with Hemant Kumar seated in the

front as conductor and Jatinder, Sandeep, and Harsh occupying the rear seats. Hemant Kumar sustained grievous injuries and was immediately taken to Jolly Grant Himalayan Hospital, where he later succumbed to his injuries, while the other occupants suffered minor injuries. The DDR asserted that the accident occurred suddenly and no one was at fault.

10.1 The learned Tribunal, after thorough examination of DDR Ex.R1 and the evidence on record, rightly discarded DDR Ex.R1, noting that Nitin Kumar was not an occupant of the vehicle and therefore not an eyewitness. During the inquiry, the claimants examined PW-2 Sandeep, an injured eyewitness who was present in the car, and he provided a detailed account of the circumstances leading to the accident. He deposed that Gaurav was driving at an excessive speed in a rash and negligent manner despite repeated requests to slow down, and while attempting to avoid an oncoming motorcycle, the vehicle overturned.

10.2 The testimony of the injured eyewitness provided clear and compelling evidence that the accident was caused by the rash and negligent driving of respondent No.1, Gaurav. The mere absence of an FIR or the fact that Nitin, a relative of both the deceased and the driver, attempted to downplay the incident through the DDR does not absolve the respondents or the Insurance Company of liability. The learned Tribunal correctly preferred the testimony of the injured eyewitness.

10.3 Furthermore, applying the principle of '*Res Ipsa Loquitur*', the negligence of respondent No.1 is evident. The DDR itself confirms that the car turned over because it became uncontrollable, which could only occur if the vehicle was driven at high speed without proper control. Based on the eyewitness testimony and the circumstances of the accident, it is evident that the accident resulted from the rash and negligent driving of the insured vehicle.

10.4 Regarding the liability of the Insurance Company, Hemant Kumar cannot be considered a "Tortfeasor" merely because he was the brother of the insured. As per the Insurance Policy, both the driver and passengers of the vehicle are covered. Therefore, the Insurance Company cannot evade liability on the ground that the deceased was related to the owner or driver. The learned Tribunal was thus correct in holding the respondents liable to pay compensation for the death of Hemant Kumar.

11. Regarding the quantum of compensation, the learned Tribunal rightly relied upon the Income Tax Return (ITR) of the deceased for the assessment year 2017-18 to determine his income. Although the claimants had produced ITRs for the preceding assessment years—2014-15, 2015-16, and 2016-17—these reflected lower earnings compared to the 2017-18 return. Consequently, the Tribunal's approach of considering the most recent ITR as the benchmark for assessing loss of dependency is both logical and consistent with established principles for awarding compensation in fatal accident claims.

12. The learned counsel for the respondent contended that the Tribunal erred in considering only the last Income Tax Return (ITR) of the deceased, asserting that the proper approach would have been to compute the average income over all the ITRs submitted. However, the Hon'ble Apex Court, in **Rupali Kailas Mamode vs. National Insurance Company Limited, 2023 ACJ 327**, para 3, has unequivocally held that the most recent

ITR can be legitimately adopted as the standard for determining the deceased's income for the purpose of awarding compensation. The operative portion of the judgment is extracted as follows:-

> "The High Court while reducing the compensation has arrived at the conclusion that the income as indicated in the last returns would not be justified and the average of three years is taken and therefore has reduced the compensation. Though learned counsel for the respondent Insurance Company seeks to contend that the High Court having taken note of the decisions rendered by this Court has arrived at such conclusion, we are of the opinion that in the present facts of the case, in any event such conclusion by the High Court was not justified. This is for the reason that as noted the deceased was an architect and he was doing contract work, the income-tax returns which he had filed from the period 2004-2005 onwards indicated that there was a steep increase in his income as compared to a sum of Rs.89,964/- declared in the year 2004-2005 and that benefit cannot be denied. If this aspect of the matter is kept in perspective, the income was bound to increase many folds if he had survived and such income which is denied to the family is the loss of dependency which was required to be determined."

13. The Hon'ble Apex Court, in **Sangita Arya and Others vs. Oriental Insurance Company Limited and Others, 2020 (5) SCC 327**, has expressly disapproved the practice adopted by certain Tribunals of calculating compensation by taking an average of the deceased's income based on multiple ITRs submitted on record. The Court held that such an approach is not justified, emphasizing that the most recent ITR should be treated as the appropriate benchmark for assessing the income of the

deceased for compensation purposes. The relevant extract from the judgment is as follows:-

> "12.2 Second, the High Court determined the income of the deceased by taking the average of the ITRs filed for the years 200203 at Rs. 54,000 p.a., 200304 at Rs. 52,405 p.a., and 200405 at Rs. 51,500 p.a. The learned Single Judge disregarded the ITR for the year 200607, wherein the income of the deceased was shown as Rs. 98,500 p.a. on the ground that it was allegedly filed almost one year after the death of the deceased. This finding also is factually incorrect."

14. Where successive ITRs demonstrate a consistent upward trend in the income of an individual, the appropriate basis for determining the deceased's income at the time of death is not the average of past returns, but rather the income reflected in the most recent ITR. The learned Tribunal, in the present case, has rightly adopted this approach, relying upon the last ITR to ascertain the deceased's income, and thus has not committed any error in this regard.

14.1 With respect to the interest awarded on the compensation, the Tribunal granted interest at the rate of 6% per annum. Such a rate cannot be deemed excessive and, in fact, may be considered on the lower side. Considering the totality of the circumstances and the arguments advanced, there is no manifest illegality or infirmity in the conclusions reached by the Tribunal. Consequently, the appeal filed by the respondent-Insurance Company is dismissed, and the Award of the Tribunal stands affirmed in its entirety.

15. In light of the adjudication and final determination of the principal matter, all pending miscellaneous applications, if any, that may

have been filed in relation to or arising out of the main proceedings, are also considered disposed of. This disposal is consequential to the judgment rendered herein and does not require separate or independent adjudication, thereby bringing the entire matter, including ancillary proceedings, to a close.

(VIRINDER AGGARWAL)
JUDGE

16.09.2025
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No