



In the High Court of Punjab and Haryana, at Chandigarh

F.A.O. No. 7010 of 2018 (O&M)

Date of Decision: 10.01.2025

National Insurance Company Limited

... Appellant(s)

Versus

Harpal Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Gopal Mittal, Advocate
for the appellant(s).

Mr. Mukesh Bhatnagar, Advocate
for respondent No.1 and 2.

Anil Kshetarpal, J.

CM-25350-CII-2018

1. For the reasons stated in the application, the same is allowed and delay of 63 days in filing the appeal is condoned.

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2. The insurance company assails the correctness of the award passed by the Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as “the Tribunal”) on 26.04.2018.

3. The claim petition filed by the parents of late Gagandeep Singh, who died in a motor vehicular accident on 31.01.2016, has been allowed by assessing the compensation of ₹11,64,000/- . At the time of the death of Gagandeep Singh, he was 19 years of age.

4. Heard the learned counsel representing the parties at length and

with their able assistance, perused the paper book.

5. The learned counsel representing the appellant has made the following submissions:-

- i) Originally, the petition was filed under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act 1988”), but it was decided as claim petition filed under Section 166 of the Act 1988.
- ii) The name of the driver has been substituted by the police.

6. This Court has considered the submissions of the learned counsel representing the appellant.

7. On 06.12.2017, the Tribunal, on examination of the pleadings, culled out the following issues:-

- “1. Whether Gagandeep Singh has died in a motor vehicle accident, which took place on 31.1.2016 at about 4.30 pm due to rash and negligent driving of Vehicle No. PB-31Q5832 by respondent no. 1? OPP*
- 2. Whether the respondent no.1 was not holding a valid driving licence, at the time of accident ?OPR*
- 3. Whether the vehicle in question was being plied, at the time of accident, by its owner, in violation of the terms and conditions of the insurance policy? OPR*
- 4. If issue no.1 is proved, whether claimant is entitled to compensation, if so, to what extent and from whom?OPP*
- 5. Relief”*

8. The first argument of the insurance company is insubstantial as

the insurance company never assailed the correctness or called upon the Tribunal to proceed with the case in accordance with Section 163 of the Act 1988. After having participated in the trial and suffering judgment, the insurance company cannot be permitted to turn around and deprive the claimants of appropriate compensation. It was for the insurance company to object at the time when the issues were framed or during the course of proceedings before the Tribunal. At this stage, the plea of the insurance company cannot be entertained particularly when the attention of the Court has not been drawn to any statutory provision that prohibits or debars the Tribunal from converting the proceedings under Section 163A to Section 166 of the Act 1988. Moreover, the Act of 1988 is a beneficial legislation for the claimants who suffered loss on account of a motor vehicular accident.

9. The second argument of the learned counsel with respect to substitution of driver lacks substance because the insurance company has not produced any evidence in this regard. The onus was on the insurance company to prove that there was substitution of driver. Moreover, the eye witness, namely Jasvir Singh (CW.2), who was travelling as a pillion rider on the motor vehicle driven by the deceased, has been examined.

10. The last argument of the learned counsel representing the appellant is with regard to the income. The Tribunal has assessed the monthly income at the rate of ₹7,500/- per month. The insurance company claimed that the minimum wage at that point of time was ₹40,000/- per annum which should have been made a basis to assess the income particularly when there was no evidence of the income. It is evident that in this case, the claimant, namely Mohan Singh has categorically stated that

late Gagandeep Singh was working as a Labourer and was drawing income @ ₹300/- per day. Thus, the Tribunal has assessed the income @ ₹7,500/- per month. The income assessed by the Tribunal is not excessive. The learned counsel representing the appellant did not press any other issue.

11. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned award passed by the Tribunal. Hence, the present appeal is dismissed.

12. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 10, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No