

(2018) 11 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order 45 of 2013 (O&M), Cross Objection 3-CII of 2014

New India Assurance Company Ltd

APPELLANT

Vs

Chanan Kaur And Ors

RESPONDENT

Date of Decision : 22-11-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2018) 11 P&H CK 0122

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Neeraj Khanna, Chander Shekhar

Final Decision : Disposed off

Judgement

“

Tejinder Singh Dhindsa, J.",,

CM-720-CII-2014 in XOBJ-3-CII-2014:,,

1. In view of the averments made in the application and which is duly supported by an affidavit, delay of 258 in refiling the Cross Objections, is",,,
condoned.,,

Application is disposed of.,,

FAO-45-2013 (O&M) and XOBJC-3-CII-2014:,,

This order shall dispose of FAO-45-2013 (New India Insurance Company Limited Versus Chanan Kaur & others) and Cross Objections No.3-CII-,,

2014 as these arise out of award dated 06.10.2012 passed by the Motor Accident Claims Tribunal, Rupnagar.",,

2. FAO-45-2013 has been filed at the hands of the appellant/ Insurance

Company assailing the award dated 06.10.2012 passed by the Motor Accident,,
Claims Tribunal, Rupnagar and in terms of which a compensation amount of
Rs.3,56,000/- has been awarded on account of death of Rajinder Singh @",,,

Lucky in a motor vehicle accident. Cross objections are filed at the hands of the
claimants seeking enhancement of compensation.,,,

3. Brief facts of the case are that a claim petition was filed under Section 166 of
the Motor Vehicles Act seeking compensation to the tune of Rs.30,,,

lakhs on account of death of Rajinder Singh @ Lucky in a motor vehicle accident
that took place on 06.11.2009. Claimants were the parents and,,

brother of the deceased. It was asserted that on the fateful day, at about 7:10
P.M., Rajinder Singh @ Lucky (since deceased) was proceeding on a",,,

motorcycle and was driving the same with due care and at a normal speed.
When he was reached in the area of village Daroli, main road in front of",,,

Baba Balak Nath Mandir, then a truck/tanker bearing registration No.HR-38-
M-8947 was standing on the road and without any parking lights or",,,

reflector. On account of the dazzling lights of the oncoming traffic, Rajinder Singh
@ Lucky (Since deceased) struck into the rear portion of the",,,

stationery truck/ tanker. On account of the impact, Rajinder Singh @ Lucky
suffered multiple grievous injuries and succumbed to the same. Accident",,,

is stated to have been witnessed by Tarlochan Singh S/o Teja Singh and Gurpal
Singh S/o Gurdial Singh, who were following the deceased on their",,,

scooter. After the accident, eye witnesses, Tarlochan Singh as also Gurpal Singh
brought Rajinder Singh @ Lucky to BBMB Hospital Nangal for",,,

treatment but he was declared dead on arrival. FIR No.123 dated 07.11.2009
was got registered on the statement of eye witness Tarlochan Singh.,,,

4. Claim petition having been filed, the same was contested in terms of filing of
written statement by respondent No.1, Vidya Dhar i.e. driver of the",,,

offending vehicle as also in terms of filing of a written statement by respondent
No.3 i.e. the New India Insurance Company Limited. Respondent,,

No.2 i.e. owner of the vehicle even though duly served did not appear and was
accordingly proceeded ex-parte by the Tribunal vide order dated,,

27.02.2012. Respondent No.1 i.e. driver of the offending vehicle in his written
statement admitted the accident that took place on 06.11.2009 as also,,

the FIR No.123 dated 07.11.2009 having been registered against him.,,,

He, however, stated that the claimants have claimed excess amount of

compensation. Insurance Company in its written statement denied the accident",,,
and set up a plea that the claim petition had been filed by the claimants in
connivance with the driver and owner of the vehicle. That apart, preliminary",,,
objections with regard to the driver of the offending vehicle not holding a valid
and effective driving license at the time of the alleged accident was also,,
taken. Yet another preliminary objection taken was that the offending vehicle
was not having valid route permit and fitness certificate.,,,

5. Upon the pleadings of the parties, the following issues were framed by the
Tribunal:",,,

1. Whether Rajinder Singh received injuries in a vehicular roadside accident
caused by respondent No.1 while driving a truck tanker No.HR-38M-,,
8947 in a rash and negligent manner? OPP,,

2. Whether claimant is entitled to receive compensation as prayed for? If so to
what extent and from whom? OPP,,

3. Whether the claim petition is not maintainable? OPR,,

4. Whether the respondent No.1 was not having a valid and effective driving
license at the time of accident? OPR-3,,

5. Relief.â??,,

6. As regards issue No.1, findings were returned by the Tribunal in favour of the
claimants and it was held that Rajinder Singh @ Lucky received",,,

multiple grievous injuries in the accident that took place on account of
negligence of respondent No.1 and who had parked the offending truck/tanker,,

bearing registration No.HR-38-M-8947 without observing traffic rules and without
making any indication that truck/tanker was parked as no reflectors,,

or parking lights had been lit by him. The plea of collusion and connivance
between the claimants and owner/driver of the offending vehicle was,,

rejected by the Tribunal.,,,

7. Insofar as quantum of compensation is concerned, Tribunal has taken age of
the deceased as 22 years, assessed the monthly income as Rs.4000/-,",,

applied multiplier of 14 and as such, computed the compensation amount at
Rs.3,36,000/-. Over and above, a lump sum amount of Rs.20,000/- has",,,

been awarded towards loss of love and affection and funeral expenses. Claimants
No.2 and 3, who were father and brother of the deceased were not",,,

held entitled to any amount of compensation as they had not proved their
dependency upon the deceased. The compensation amount was held payable,,

in favour of claimant No.1, Chanan Kaur i.e. mother of the deceased and the liability to pay the compensation amount was fastened upon the",,,

Insurance Company.,,,

8. Mr. Deepak Suri, learned counsel representing the appellant/ Insurance Company in FAO-45-2013 has raised a solitary contention as regards",,,

contributory negligence. It was argued that in the present case the deceased was driving the motorcycle and had struck against the rear portion of the,,

offending tanker/truck. As per counsel, the only conclusion that can be drawn under such circumstances is that the deceased himself was negligent",,,

and at the most, it is a case of contributory negligence. Reliance in this regard is made to the decision of the Apex Court in Raj Rani Vs. Oriental",,,

Insurance Company Limited, 2009 (ACJ) 2003 (SC).",,,

9. Per contra, counsel for the claimants/respondents No.1, 2 and 3 has vehemently opposed the contention raised on behalf of the appellant/ Insurance",,,

Company and submits that it was entirely the fault of the offending/insured tanker/truck and which had been parked on the road during late evening,,

hours and without adhering to the traffic rules.,,,

Sr. No.,Computation/Head,Revised calculation

1., "Income as assessed by

the Tribunal", Rs.4000/-

2., "Addition in income @

40% towards future

prospects", "Rs.4000/-

$4000 + 1600 = 5600/-$

3., "50% deduction towards

personal and living

expenses of the deceased", $5600 - 2800 = 2800$

4., "Compensation after

applying multiplier of 18", $2800 \times 12 = 33,600/-$

$33,600 \times 18$

$= 6,04,800/-$

5., "Conventional Heads i.e.
loss of estates, funeral
expenses and loss of
consortium etc.", "Rs.30,000/-
6., Total, "6,04,800 + 30,000 =
6,34,800/-
23. Disposed of.,,