

118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2981-2022 (O&M)

Date of Decision : July 08, 2022

National Insurance Company Limited through its Assistant Manager

.....Appellant

Vs.

Satya Devi (since deceased) through her Legal Heirs and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Om Pal Sharma, Advocate
for the appellant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this appeal, filed by the Insurance Company, is for staying the operation of impugned award dated 8.4.2022 passed by the Motor Accident Claims Tribunal, Patiala.

Brief facts of the case are that on 22.7.2015 one Ved Parkash, husband of claimant-Satya Devi met with a motor vehicle accident and later on died and her legal representatives filed the claim petition which was allowed vide impugned award dated 8.4.2022.

The Tribunal recorded that the deceased was about 73 years and was earning Rs.35,000/- per month as reflected in the income-tax returns Ex.C7 to Ex.C10 for the year 2014-15 and he was also getting remuneration of Rs.70,000/- per annum from a firm Sarup and Sons.

The Tribunal by deducting the interest, assessed the total income of Rs.70,000/- per annum as notional income and by deducting 1/3rd towards the personal expenditure applied the multiplier of 3 and additionally granted Rs.16,500/- towards the funeral expenses. The Tribunal, accordingly, awarded the compensation of Rs.1,79,000/-, along with interest @ 7.5% per annum.

Counsel for the appellant has argued that the Tribunal has wrongly treated that during the pendency of the claim proceedings Satya Devi and her LRs were impleaded on the basis of a registered Will dated 6.8.2018 executed by Satya Devi in favour of nephews of deceased Ved Parkash. It is further argued that since they were issueless, the Tribunal has wrongly awarded the compensation. The counsel has next argued that one of the witnesses CW1 appeared for examination-in-chief but his cross-examination could not be conducted and, therefore, the said evidence cannot be taken into consideration.

Counsel for the appellant has lastly argued that considering the age of the deceased as 73 years, no multiplier should have been applied.

After hearing the counsel for the appellant, I find no merit in the appeal on the ground, firstly, apart from Rajesh Kumar CW1, Satya Devi herself appeared as CW2 and proved the factum of

negligence. Secondly, the appellant-Insurance Company has not contested the Will executed by Satya Devi in favour of Ved Parkash and, therefore, in the absence of any challenge to the validity of the Will, the Tribunal has rightly held that the respondent-Ved Parkash and other are the legal heirs of Satya Devi.

Even otherwise, it is held by the Hon'ble Supreme Court in 2021(1) SCC 171 Anita Sharma Vs. New India Assurance Company Limited that failure to cross-examine the eye-witness despite availing opportunity must lead to inference of tacit admission of testimony of such witness.

It is also held by the Hon'ble Supreme Court in Civil Appeal No.4800 of 2021 (decided on 16.8.2021) titled Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon that on the death of original claimant, the Motor Accident Claim petition does not abate and legal representatives can be substituted.

In view of the above, there is no merit in the present appeal and the same is, therefore, dismissed.

July 08, 2022
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO