

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**FAO No.6336 of 2012 (O&M).
Date of Decision: 25.08.2015.**

ICICI Lombard General Insurance Company Ltd.Appellant.

VERSUS

Sita Kumari @ Sita Devi and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.M. Suri, Advocate for the appellant.

Respondents No.1 to 3 exparte.

Respondent No.5 stated to be dead.

Service of respondent No.6 dispensed with.

SNEH PRASHAR, J.

This was an appeal directed against an award dated 02.03.2012 passed by Motor Accident Claims Tribunal, Sirsa (for short, “the tribunal”) in Claim Petition No.143 of 2010 titled “Sita Kumari @ Sita Devi and others vs. Sunial Kumar Jain and others”. The prayer of the appellant is for setting aside the award dated 02.03.2012.

A claim petition was filed for grant of compensatin to the tune

of Rs.30 lacs on account of death of Tej Nara Narayan, husband of respondent-claimant No.1 and father of respondents-claimants No.2 and 3 in a motor vehicular accident that took place on 11.06.2010 in the area of Air Force Station Sirsa near DSE Gate, District Sirsa. Shri Tej Narayan was driving his motorcycle No.UP78-8A-4630 and his wife (claimant No.1 Sita Kumari alias Sita Devi) was the pillion rider and they were going from Air Force Station to Mirpur Colony i.e. towards Dabwali when near DSE Gate, a Maruti Swift Dezire bearing registration No.HR-59-5858 (hereinafter referred to as the “offending car”) due to its rash and negligent driving by Sunial Kumar Jain (respondent No.1 in the claim petition) hit their motorcycle from backside. As a result of accident, they both alongwith motorcycle fell down and were dragged with the car upto a distance of about 30 feet. Both sustained multiple grievous injuries on vital parts of the body. While being treated at Army Hospital, Delhi Cant, Tej Narayan succumbed to the injuries on 16.06.2010.

The accident was reported to the police and on the basis of which First Information Report no.154 dated 11.06.2010 under Sections 279, 337, 427 and 304-A of the Indian Penal Code was registered against respondent Sunial Kumar Jain, driver of the offending car at Police Station Sadar, Sirsa.

Respondent No.1-Sunial Kumar Jain, being driver, Dr. Makhan Lal, being owner and ICICI Lombard General Insurance Co. Ltd., being the insurer of the offending car were impleaded as respondents in the claim petition.

All the three respondents (including the appellant-insurance company) contested the petition on various grounds. They denied the occurrence of accident as alleged by the claimants and also denied involvement of the offending car in the accident. The insurance company alleged that the driver of the offending car did not possess a valid and effective driving licence at the time of the accident and the car was being driven in contravention to the terms and conditions of the insurance policy.

On the pleadings of the parties, following issues were settled:-

1. *Whether Tej Narayan died in a road side accident on 11.06.2010 which took place on account of rash and negligent driving of Maruti Car No.HR-59-5858 by respondent No.1 as alleged? OPP.*
2. *To what amount of compensation the petitioners are entitled to and from whom? OPP.*
3. *Whether the petition is not maintainable in the present form? OPR.*
4. *Whether the petitioners have no cause of action or locus standi to file this petition? OPR.*
5. *Whether the petition is bad for nonjoinder and misjoinder of the parties? OPR.*
6. *Whether respondent No.1 did not possess a valid and effective driving licence on the date of alleged accident, if so to what effect? OPR-3.*
7. *Whether there is collusion between the petitioners and respondents No.1 and 2, if so to what effect? OPR.*
8. *Whether the petitioners have concealed the true and material facts from this Tribunal, if so to what effect? OPR.*
9. *Relief.*

Parties to the claim petition led ocular and documentary

evidence in support of their rival contentions. Considering the evidence available, learned tribunal came to the conclusion that deceased Tej Narayan suffered accidental injuries due to rash and negligent driving of the offending car by respondent-Sunial Kumar Jain and decided Issue No.1 in favour of the claimants. Resolving Issues No.2 to 6 an amount of Rs.26,99,218/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till realization was awarded to the claimants. The driver, owner and insurer (respondents No.1 to 3 in the claim petition) were held jointly and severally liable for payment of the compensation amount.

Feeling aggrieved by the impugned award, the appellant-insurance company preferred the instant appeal.

The submissions made by learned counsel representing the appellant have been considered.

Learned counsel for the appellant argued that in his written statement a specific preliminary objection was raised that the petition was bad for misjoinder and nonjoinder of necessary parties. It had come in the statement of Sita Devi, given before the criminal Court, that the offending car was being driven by a lady. However, in her statement made before the tribunal, she stated that the offending car was being driven by a man. Apparently, the testimony of claimant Sita Devi was not reliable and she being the only eyewitness of the accident examined by the claimants, it could not be held established that respondent Sunial Kumar Jain was the driver of the offending car at the time of accident. In fact, respondent-Sunial

Kumar Jain was introduced as driver because he had a driving licence and the lady who was actually driving the car at the time of accident had no driving licence at all.

The argument put forth by learned counsel for the appellant has no base to stand on. The appellant may have taken an objection in the written statement that the petition was bad for misjoinder and nonjoinder of necessary parties but it was not its allegation that the offending car was being driven by some lady at the time of the accident and that respondent-Sunial Kumar Jain was not the driver. Rather, a specific objection was raised that respondent-Sunial Kumar Jain, driver of the offending car did not possess a valid and effective driving licence at the time of accident which means that the appellant-insurance company admitted in its pleadings that he was the driver.

The statement made by claimant Sita Devi before the criminal Court had not been proved by the appellant. Otherwise also, a claim petition is to be decided on the basis of evidence adduced in the petition and not merely on the evidence led in any other proceedings. Claimant Sita Kumari @ Sita Devi, being a victim of the accident herself, was an eyewitness and it was on her statement that First Information Report Ex.P4 was registered in respect of the accident. In her deposition, she gave a detailed narration of the accident and also firmly stated that the accident had taken place due to rash and negligent driving of the offending car by its driver respondent-Sunial Kumar Jain. The registration number of the offending car was mentioned in the First Information Report and was also reiterated by the

claimant PW3 Sita Kumari @ Sita Devi. No evidence could be led by the respondents to rebut the said evidence. Hence, it was rightly held by the tribunal that the offending car was the vehicle involved in the accident and also that accident had taken place due to rash and negligent driving of the offending car by respondent- Sunial Kumar Jain.

Learned counsel also argued that the compensation awarded by learned tribunal was on the higher side. However, he failed to demonstrate any legal or clerical error in the calculations arrived at by learned tribunal. Accordingly, there being no ground on which the award passed by learned tribunal could be challenged by the appellant, the appeal is dismissed.

(SNEH PRASHAR)
JUDGE

25.08.2015.
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