

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1133 of 2015 (O&M)
Date of Decision: July 22, 2015

United India Insurance Company Ltd.

...Appellant

Versus

Preeti Sammi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajesh K. Sharma, Advocate
for the appellant-Insurance Company.

Mr.Rajbir Singh, Advocate
for respondents No.1 to 5.

Mr.Arvind Rajotia, Advocate
for respondents No.6 and 7.

INDERJIT SINGH, J.

Appellant-United India Insurance Company Ltd. has filed this appeal against respondents-claimants Preeti Sammi, Nancy Sammi, Chahat Sammi, Laxmi Devi, Krishan Chand and Pardeep Singh, owner and Jastar, driver of car bearing registration No.PB-11AJ-9595 (offending vehicle), challenging the impugned Award dated 15.11.2014 passed by learned Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'Tribunal').

The brief facts of the case are that claimants-respondents Preeti Sammi, Nancy Sammi, Chahat Sammi, Laxmi Devi and Krishan Chand filed claim petition against respondents Pardeep Singh, owner,

Jastar, driver and United India Insurance Company Ltd., Insurer of the offending vehicle under Section 166 of the Motor Vehicles Act on account of death of Joginder Kumar. As per the case of the claimants, on 24.10.2013 Joginder Kumar was returning from Hisar after attending Bhog ceremony. At about 9.15, when he reached near Ghanurki Focal Point, a car bearing registration No.PB-11AJ-9595 (offending vehicle) came from opposite side being driven by driver Jastar at a very high speed and in rash and negligent manner and struck against the motorcycle of Joginder Kumar. Due to the impact, Joginder Kumar received multiple simple and grievous injuries and died. It is alleged that accident took place due to rash and negligent driving of offending vehicle by respondent Jastar. FIR was also got registered on the same with Police Station Sadar, Nabha. It is also the case of the claimants that Joginder Kumar was aged about 47 years and running a shop of electric goods and earning ₹30,000/- per month.

Upon notice, respondents owner and driver filed written statement and denied the fact of the accident and also denied the income of the deceased. It is further stated that offending vehicle was insured with respondent-Insurance Company (present appellant) upto 17.07.2014. It is also stated that offending vehicle has been falsely implicated in connivance with the police. Respondent-Insurance Company also raised same objections.

After framing issues, claimants examined one of the claimant Preeti Sammi as PW-1, Sukhwinder Singh as PW-2, Bharat

Bhushan, Senior Tax Assistant as PW-3 and Nitin Kumar, Single Window Operator, SBOP as PW-4.

On the other hand, to rebut the case of the claimants, respondents examined driver Jastar Ali as RW-2 and closed the evidence.

Learned Tribunal, after discussing the evidence, decided issue No.1 i.e. "Whether Joginder Kumar died in motor vehicle accident which took place on 24.10.2013, within the area of village Ghanurki Focal Point, on account of rash and negligent driving of car bearing No.PB-11AJ-9595 driven by respondent No.2?OPP", in favour of the claimants and against the respondents. Learned Tribunal further by assessing the income of the deceased as ₹1,67,430/- per annum, awarded compensation of ₹22,47,172/-.

Notice of motion was issued and learned counsel for the respondents appeared and contested the appeal.

At the time of arguments, learned counsel for the appellant-Insurance Company argued that income of the deceased has been assessed by the Tribunal on higher side. He further argued that name of driver and number of vehicle are not mentioned in the FIR and FIR was got registered by Harmesh Kumar, who was not examined. Learned counsel for appellant next argued that the findings given by the Tribunal on issue No.1 are without any cogent reasoning.

On the other hand, learned counsel for the respondents-claimants contested the appeal by stating that income has been

assessed by the Tribunal as per income tax return and eye witness and documents placed on record have duly proved the rash and negligent driving of the offending vehicle by Jastar.

After hearing learned counsel for the parties and after going through the record, I find that the Tribunal has assessed the income of the deceased as per the income tax return filed by the deceased on 15.10.2013, which is Ex.P2, in which the annual income of the deceased is shown as ₹1,67,430/-. This income tax return was filed before the accident. Therefore, in no way, income assessed by the Tribunal can be held as excessive. No other argument has been raised on quantum. So, the argument of learned counsel for the appellant that income of the deceased has been assessed on higher side has no merit and the findings of the Tribunal which are based on income tax return, are correct, as per law and do not require any interference from this Court.

As regarding the findings given on issue No.1, I find that the Tribunal has discussed the statements of PW-2 Sukhwinder Singh, who has deposed as per the averments in the claim petition. He further deposed that offending car came from opposite side, which was being driven at a very high speed in a rash and negligent manner and without blowing horn and struck against the motorcycle of the deceased while coming on the wrong side of the road and due to this impact, Joginder Singh received multiple simple and grievous injuries and died. He has specifically deposed that accident took place due to rash and negligent driving of Jastar and he was an eye witness to the

accident and his statement was recorded by the police. The respondents themselves brought RW-1 Ajay Kalyan, Addl. Ahlmad, Court of SDJM, Nabha, who brought the record of case titled as 'State vs. Jastar Ali' pertaining to the FIR of this case and proved the statements of some witnesses recorded under Section 175 Cr.P.C. and proved the FIR. RW-2 Jastar Ali alleged that no accident took place with Joginder Kumar and a false case has been planted upon him but in cross-examination he admitted that charge-sheet has been framed against him.

In view of the evidence produced on the record by the parties, I find that statement of eye witness is duly supported and corroborated by documentary evidence. The trial is going on in the criminal Court. The Tribunal, therefore, believed the statement of Sukhwinder Singh, who imputed the rashness and negligence on the part of driver of the offending vehicle. The fact that name of the driver and number of vehicle has not been mentioned in the FIR, will not show that offending vehicle has been falsely planted in this case. The trial is going on and accused has been nominated and as per the statement of RW-1 Ajay Kalyan, the offending vehicle was taken into police possession vide recovery memo. RW-1 also deposed that driver Jastar Ali was arrested on 16.12.2013 in the criminal case. There is nothing on the record to show that any complaint etc. was made to any higher authority regarding false implication of the driver. RW-2 Jastar himself admitted that he is facing trial in the Court of SDJM, Nabha and the charges have been framed and case is fixed

for evidence of the prosecution. Merely denial of the driver is insufficient to prove that no accident has taken place. Rather, pendency of the criminal trial against the driver Jastar also supports the version of the claimants that respondent-Jastar has caused the accident due to rash and negligent driving of offending vehicle. The mere fact that the Tribunal has not given the findings in detail by minutely discussing the evidence, is no ground for setting aside the Award. I have gone through the evidence on record. The findings given on issue No.1 by the Tribunal are correct, as per evidence. Mere non-examination of the complainant, who got registered the FIR, will not be fatal to the claimants' case. The eye witness has been brought by the claimants to prove rash and negligent driving.

In view of the above, I find that the findings given by the Tribunal are correct, as per evidence and law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

July 22, 2015
Vgulati

(INDERJIT SINGH)
JUDGE