

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

**1. FAO No.5104 of 2013 (O&M)
Date of decision: 18.11.2015**

Smt. Meena Devi and others

....Appellants

Versus

Sonu and others

....Respondents

**2. FAO No.5105 of 2013 (O&M)
Date of decision: 18.11.2015**

Smt. Meena Devi

....Appellant

Versus

Sonu and others

....Respondents

**3. FAO No.5106 of 2013 (O&M)
Date of decision: 18.11.2015**

Smt. Meena Devi

....Appellant

Versus

Sonu and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Bansal, Advocate,
and Mr. Joginder Kumar Saini, Advocate,
for the appellant(s).

Mr. Shakti Kaushik, Advocate,
for Mr. N.S. Bhardwaj, Advocate,
for respondent No.3.

Ms. Vandana Malhotra, Advocate,
for respondent No.4-Insurance Company.

RITU BAHRI J.

By this common order, FAO Nos.5104, 5105 and 5106 of 2013 shall be disposed of together as common questions of law and facts are involved in all the appeals being arisen out of same accident.

All the above appeals have been filed by the claimants-appellants against a common award dated 19.11.2012 passed by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') whereby three claim petitions i.e. MACT Case Nos.258 of 2009, 259 of 2009 and 260 of 2009 have been dismissed. Before the Tribunal, MACT Case No.258 of 2009 was filed seeking compensation on account of death of Jai Parkash in a motor vehicular accident which took place on 02.11.2008; MACT Case No.259 of 2009 was filed for compensation on account of injuries suffered by Smt. Meena Devi and MACT Case No.260 of 2009 was filed for compensation on account of damage caused to the motorcycle in the aforesaid accident.

Brief facts of the case are that deceased-Jai Parkash was serving in Indian Army as Hawaldar. On 02.11.2008, he along with his wife Smt. Meena Devi had gone to village Milkpur. On the same day, in the evening, they were returning back to their village Dang Kalan from village Milkpur on a motorcycle bearing registration No. HR-16-A-6853. When they reached near Anand Brick Kiln, a Mahindra Max bearing registration No. HR-04-A-3684 being driven by Sonu-respondent No.1 in a rash and negligent manner, came from the side of Bhiwani at a very high speed and struck against the motorcycle of Jai Parkash, as a result of which, both the occupants of motorcycle fell down and suffered multiple injuries. The said accident was witnessed by Ram Chander son of Ram Sarup, who took

injured to Jindal Hospital, Hisar, where Jai Parkash was declared as dead. Meena Devi was admitted in the said hospital. With regard to the accident, FIR No.211 dated 03.11.2008, under Sections 279/337/304-A IPC was registered at Police Station, Bawani Khera against Sonu-respondent No.1. Consequently, the claimants-appellants filed aforesaid three claim petitions before the Tribunal.

Upon notice, separate written statements were filed by the respondents by controverting the stand taken by the claimants-appellants in the claim petitions.

From the pleadings of the parties, following issues were framed by the Tribunal:-

1. Whether the petitioners are entitled for compensation on account of death of Jai Parkash, injuries to Smt. Meena Devi and also damage to Motorcycle No. HR-16-A-6853 belonging to the petitioners? OPP
2. If issue No.1 is proved in favour of petitioners, the amount of compensation for which the petitioners are entitled for? OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Whether the petitioners have no cause of action and locus standi to file the present petition? OPR
5. Whether the petitioners are estopped from filing the petitions by their own act and conduct? OPR
6. Whether the terms and conditions of the policy of insurance were violated deliberately by owner of motorcycle bearing registration No. HR-16A-6853? OPR

7. Relief.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the claimants-appellants have failed to prove that on 02.11.2008, at about 5.00 P.M., an accident had taken place between motorcycle bearing registration No. HR-16-A-6853 and Mahindra Max bearing registration No.HR-04-A-3684 due to rash and negligent driving of Mahindra Max No.HR-04-A-3684 by Sonu-respondent No.1. The Tribunal had observed that the FIR regarding accident was lodged on the statement of Ram Chander (PW-3), who was eye witness the accident. Smt. Meena, who was an injured eye witness was examined as PW-6. The accident had taken place on 02.11.2008 and FIR (Ex.P2) was registered on 03.11.2008 at 12.15 P.M. After the accident, the injured-Meena was admitted in Jindal Hospital, Hisar at around 7.53 P.M. on 02.11.2008. Tribunal had returned a finding on issue No.1 that there was no explanation, as to why the FIR was not got registered on the same day either by Ram Chander or by Neeraj. Further, there is no explanation, why ruqa was not sent by the Medical Officer, Jindal Hospital, intimating and calling the police to record an FIR. As per FIR, Ex.P2, ruqa was received at Police Station, Bawani Khera from Police Post, General Hospital, Hisar on 03.11.2008. Said ruqa was with regard to the death of Jai Parkash in a road accident. It did not mention admission of Smt. Meena in Jindal Hospital, in an injured condition. In her deposition, Smt. Meena (PW-6), she did not state that she got unconscious and was unable to make a statement. She further stated that her statement was recorded by the police on the next day in Jindal Hospital, Hisar.

The Tribunal had proceeded on the assumption that since the FIR was not recorded on the same day of accident, i.e. 02.11.2008,

therefore, the claimants had failed to prove that the accident had taken place between the motorcycle of deceased-Jai Parkash and offending vehicle i.e. Mahindra Max on 02.11.2008. Ultimately, the Tribunal dismissed all the claim petitions.

Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeals.

At this stage, reference can be made to the judgment passed by the Additional Sessions Judge, Bhiwani in case titled as Ram Chander Vs. Sonu and another, decided on 01.04.2015 (Annexure A-1), whereby appeal filed by Ram Chander-complainant against the judgment dated 05.12.2012, has been allowed and Sonu-respondent No.1, who was facing trial in FIR No.211 dated 03.11.2008, under Sections 279/337/338/304-A IPC, has been convicted and sentenced accordingly. In this judgment, it has been held that Sonu-driver was driving the offending vehicle i.e. Mahindra Max bearing No. HR-04-3684 in a rash and negligent manner and caused hurt to Meena Devi and also caused death of Jai Parkash. Trial Court, vide judgment dated 05.12.2012, had acquitted the accused (Sonu) of the charges framed against him. However, on appeal, this finding has been reversed. In the aforesaid judgment, it has been further observed that there was no delay in lodging the FIR as the accident had taken place on 02.11.2008 and the injured Jai Parkash & Meena Devi were taken to the hospital from the spot. Jai Parkash succumbed to the injuries in the way and Meena Devi was unconscious. Mange Ram (PW-6) had proved the photographs with regard to the accident as Ex.P-1 to Ex.P-5. Gian Singh, Mechanic (PW-4) deposed that he had examined the offending vehicle make Mahindra Max bearing registration No.HR-04-A-3684 and gave his report Ex.PW4/A. Kansi Ram, ASI (PW-5),

who was Investigating Officer of the case, had proved the application moved by him for conducting postmortem examination as Ex.PW5/A, endorsement Ex.PW5/B, proceedings under Section 174 Cr.P.C. Ex.PW5/C, receipt of handing over the dead body Ex.PW5/D, site plan Ex.PW5/E and recovery memo Ex.PW5/F.

All the above said evidence was considered by the lower appellate Court while convicting Sonu-driver of the offending vehicle in the trial.

The above said evidence is sufficient to reverse the finding recorded by the Tribunal on issue No.1 in the present case, as driver of the offending vehicle namely Sonu-respondent No.1 had been held guilty and convicted by the Additional Sessions Judge, Bhiwani in the criminal appeal arising out of FIR (Ex.P2).

In view of the above, the impugned Award dated 19.11.2012 passed by the Tribunal is set aside and the matter is remanded back to the Tribunal with direction to assess the compensation by examining the evidence led by both the parties with regard to aforesaid three claim petitions after giving due notice to the parties concerned. The Tribunal is further directed to conclude the proceedings in all the claim petitions within a period of four months from the date of receipt of certified copy of this order.

All the appeals i.e. FAO Nos.5104, 5105 and 5106 of 2013 stand disposed of accordingly.

(RITU BAHRI)
JUDGE

18.11.2015
ajp