

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

**FAO No.3679 of 2015 (O&M)
Date of Decision: August 13, 2015.**

United India Insurance Company Ltd.

.....APPELLANT(s).

VERSUS

Kirna Devi and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pardeep Goyal, Advocate
for the appellant (s).

Mr. V.K. Gupta, Advocate
for respondent No.1-caveator.

SURINDER GUPTA, J.

This appeal has been filed against the award dated 31.01.2015 passed by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri in the claim petition (MACT case No.63 of 2012) filed by Kirna Devi and another (respondents No.1 and 2) claiming compensation for the death of Mehar Dass (hereinafter referred to as 'the deceased') son of Narata Ram, husband of respondent No.1 and father of respondent No.2.

The case of the claimants, in brief, is that on 07.02.2012 at about 08.00 pm, the deceased along with his sister's son Indraj was going on a motorcycle bearing registration NO.HR-02-B-9570. Indraj was driving the motorcycle. A tractor bearing registration No.HR-02N-5581 came from the opposite side. It was being driven in a rash and negligent manner. The driver of the tractor brought it on the wrong side of the road and hit the

motorcycle, as a result of which the deceased sustained multiple injuries and was brought to Government Hospital, Khijrabad, from where he was referred to Civil Hospital, Yamuna Nagar and then to PGI, Chandigarh. The deceased remained admitted in PGI, Chandigarh 08.02.2012 to 17.02.2012 and was then again admitted in Civil Hospital, Yamuna Nagar and ultimately died on 21.02.2012.

In the joint written statement filed by driver and owner of the tractor i.e. respondents No.6 and 7 (respondents No.1 and 2 in the claim petition) denied that the accident had taken place due to rash and negligent driving of respondent No.6. False FIR was registered against respondent No.6 for causing the accident. It was pleaded that the accident had taken place when Indraj in order to save a stray dog which had come on the road, turned the motorcycle towards the right side, as a result, the motorcycle slipped, resulting in injuries to the deceased. It was alleged that the tractor was insured with respondent No.3.

Respondent No.3 admitted the factum of insurance of the tractor, however, denied the accident. A plea was taken that the claim petition is the result of collusion between the claimants and respondents No.6 and 7.

After recording evidence, the Tribunal allowed compensation to the tune of ₹11,11,725/- to the claimants.

Insurance company of the tractor has come up with this appeal on the ground that the offending vehicle i.e. the tractor was planted in this case at later stage. The first version regarding the occurrence was got

recorded by Indraj vide his statement Ex.R1, whereupon rapat No.9 was

recorded in the Daily Diary Register of Police Station Khijrabad, District Yamuna Nagar.

Learned counsel for the appellant-insurance company has argued that in his first version to the police by complainant Indraj, which was given on 10.02.2012 i.e. three days after the accident, it was mentioned that complainant along with deceased was going towards village Tihmo. On the way, a stray dog came in front of his motorcycle and in order to save the dog, he took a turn towards right side due to which the motorcycle skidded, resulting in injuries to him and his maternal uncle Mehar Dass. He has argued that FIR in this case was got registered by Shiv Charan son of Rameshwar Dass on 21.02.2013, wherein tractor owned by Kulwant Singh of village Bahadarpur was involved. The police conducted partial investigation and presented challan against Jarnail Singh, respondent No.6. He has further argued that the name of the driver was not mentioned in the FIR. The name of the owner of the tractor was also got recorded as Kulwant Singh instead of Jaswant Singh. As per the statement of Dr. Abhimanyu, Medical Officer, posted at Trauma Centre, Yamuna Nagar, the deceased was smelling alcohol when brought to the hospital at Yamuna Nagar. He argues that the offending vehicle i.e. tractor was planted in this case at later stage after due deliberation and consultation just to get compensation.

Learned counsel for the caveator-respondent No.1 argues that DDR recorded on the statement of Indraj was the result of settlement with respondents No.6 and 7, who had initially agreed to bear the expenses of treatment of deceased but later on when the condition of deceased deteriorated and became critical, respondents No.6 and 7 resiled. Police

during investigation has found the version as recorded in the FIR as correct and presented the challan against the driver of the tractor who is facing trial. The appellant did not examine the driver of the tractor to prove that no accident had taken place as alleged by the claimant and proved by the testimony of Indraj and Shiv Charan.

It is a case where the matter was not reported to the police immediately after the accident which took place on 07.02.2012. On 10.02.2012, a DDR was recorded at Police Station Khijrabad District Yamuna Nagar on the statement of Indraj, wherein he stated that the accident took place as a stray dog came in front of his motorcycle. While appearing as PW4, Indraj has clarified that the accident was caused by the driver of tractor bearing No.HR-02N-5581, who was driving the tractor in a rash and negligent manner. The driver of the tractor hit the motorcycle with the side of the tractor, as a result of which, he and deceased fell down and received injuries. After the accident, a Panchayat was convened by respondents No.6 and 7 and they assured that they will duly compensate the claimants and also bear the expenses of treatment of Mehar Dass and requested them not to lodge the FIR. Believing their assurance, he got recorded his statement before the police regarding the cause of accident. However, when the condition of Mehar Dass (deceased) became critical and he died, respondents No.6 and 7 resiled from their stand. Respondents No.6 and 7 have not challenged the version of this witness that the accident had not taken place with the offending vehicle in the manner as deposed by him.

Shiv Charan, while appearing as PW5, has also supported the

accident, a compromise was got effected by the respectables of the village under which respondents No.6 and 7 agreed to compensate the claimants but thereafter resiled. He stated that on 10.02.2012 Jarnail Singh had made a telephonic call at which he reached village Bahadarpur, where a compromise was effected. A sum of ₹10,000/- was paid in the Panchayat. He has further stated that respondents No.6 and 7 had taken Mehar Dass to the hospital. He was given suggestion in the cross-examination which he has admitted that the compromise was effected on 10.02.2011 with Jaswant Singh. To rebut the above testimony of Indraj and Shiv Charan, no evidence was produced by the respondents/appellant and their testimony has gone unrebutted.

It is a usual feature in rural areas that after the accidents, attempts are made for amicable settlement to avoid the registration of the FIR. It is proved from the statement of Indraj and Shiv Charan that the compromise had taken place and it was under compromise that Indraj had got recorded the DDR dated 10.02.2012. Otherwise, there was no reason or occasion for Indraj to get recorded DDR regarding the accident by going to the police Station. This fact is admitted that respondent No.6, the driver of the truck is facing trial in the criminal case. The respondents have not examined him to prove that no accident with the offending vehicle had taken place or that the accident did not take place in the manner as stated by the witnesses.

Under these circumstances, the Tribunal has rightly relied on the testimony of Indraj, the driver of the motorcycle while reaching the

conclusion that the accident had taken place due to rash and negligent

driving of offending vehicle by respondent No.6. I find no legal or factual infirmity in the conclusion drawn by the Tribunal, calling for any interference.

Learned counsel for the appellant has further argued that the Court while calculating the amount of compensation, has allowed additional 50% of the actual income of the deceased towards future prospects.

The matter regarding payment of compensation towards future prospects has already been settled by the three Judges' Bench of the Hon'ble Apex Court in the judgment dated 15.05.2015 passed in ***Munna Lal Jain versus Vipin Kumar Sharma***, reported as ***(2015) 6 SCC, 347***. Relying on the observations in the case of ***Rajesh and others versus Rajbir Singh and others, (2013) 9 SCC, 54***, it was observed that if the deceased/victim is below 40 years there must be addition of 50% to the actual income of the deceased while computing future prospects. The submission of learned counsel for the appellant to this effect has no merits, as such, declined.

Similar view was taken by Hon'ble Supreme court in ***Smt. Neeta Vs. The Divisional Manager, MSRTC Kolhapur, 2015(3) SCC 590*** and it was observed that even in the case of private employment, future prospects can be taken into consideration to determine the loss of dependency.

As a result of my discussion above, this appeal has no merits.

Dismissed.

Statutory amount of ₹25,000/- deposited by appellant be sent to the Tribunal for payment to the claimants towards compensation allowed in claim petition.

August 13, 2015.

Sachin M.

**(SURINDER GUPTA)
JUDGE**