106 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3767 of 2015 (O&M)
Decided on: 7.7.2015.

Shri Ram General Insurance Company Limited

... Appellant

Versus

Komal and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate,
for the appellant.

K.C.PURI.J.
CM No. 11322-CII of 2015

For the reasons mentioned in the application, delay of 31 days in filing the appeal stands condoned. The application stands allowed.

Main case

Shri Ram General Insurance Company Limited has directed this appeal against the Award dated 16.12.2014 passed by Sh. Vimal Sapra, Presiding Officer, Motor Accident Claims Tribunal, Karnal vide which compensation of Rs.16,20,528/- was awarded to the claimants.

On 21.5.2011 deceased Satpal Singh along with injured Dharam Singh and Bhateri Devi was going from village Jundla to village Katalehri for taking medicine from doctor on motr cycle bearing No. HR-05-Y-9145 being driven by deceased Satpal Singh at moderate speed. At that time, son of deceased namely Komal along with his cousin brother Rubal were also on their motor cycle behind the motor cycle of the deceased and at about 4.00 PM, when they reached near Dera Balkar Singh Kahlon, little behind bus stand of village Katalehri on Assandh road, in the meantime, a canter bearing registration No. HR-12-GA-0559, came from Assandh side at a very high speed, rashly and negligently and all of a sudden dashed into the motor cycle of the deceased Satpal Singh, due to which all the occupants of the motor cycle fell down on the road and sustained serious and multiple injuries on various parts of their bodies. It was pleaded that the accident had taken place due to the rash and negligent driving of offending canter by respondent No.1.

The respondents appeared and filed separate written statements. In their joint written statement, respondents no.1 and 2 took preliminary objections of maintainability, locus standi, cause of action and concealment of true and material facts etc. and that there were three passengers on the motor cycle driven by the deceased and he himself was responsible in causing the accident as he could not control the motor cycle. On merits, the factum of accident was admitted. It was pleaded that the accident took place due to the rash and negligent driving of the motor cycle driven by the deceased as he could not control the same due to triple passengers.

Respondent no.3 took preliminary objections regarding locus standi, collusion, maintainability, mis-joinder and non-joinder of necessary parties etc. It was pleaded that no accident took place with the offending Canter. It was alleged that the respondent no.1 was not holding any valid and effective driving licence at the time of alleged accident. It was denied that the driver of the offending vehicle was negligent in driving the offending vehicle or that the accident had taken place due to the rash and negligent driving of driver of the canter. It was pleaded that in fact no such accident had taken place. The police has falsely implicated the respondent no.1 in the criminal case. The insurance company has taken the plea of contributory negligence of the Canter as well as the deceased driver of the motor cycle. Defences available under sections 134(c),147,149, 157 and 170 of the MV Act were also taken.

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

> (1) Whether the deceased Satpal Singh alas Satyapal son of Darshan Singh had died in a road side accident and injured Dharam Singh son of Munshi Ram and Bhateri wife of Dharam Singh had suffered injuries in an accident, which took place on 21.5.2011 at about 4.00 P.M., near Dera Balkar Singh Khillon on Assand Road in the area of Katlehri, P.S. Sadar, Karnal, because of rash and negligent driving of the

respondent no.1 being driver of the offending vehicle bearing no. HR-12GA-0559? OPP.

(2) If issue no.1 is proved in affirmative, whether the claimants Komal, Amandeep Singh, Harvel Kaur,Simaranjeet are entitled for compensation on account of death of Satpal Singh alias Satyapal Singh and injured Dharam Singh and Bhateri Devi are entitled for compensation on account of injuries suffered by them, as claimed? If so to what extent, from whom and on what terms and conditions?OPP

(3) Whether the respondent no.1 was not having valid and effective driving licence at the time of this accident and the offending vehicle was being plied in violation of terms and conditions of the policy, if so to what effect?OPR

(4) Whether the vehicle in question was being plied without a valid policy and in contravention of the terms and conditions of the policy, if so to what effect?OPR

(5) Relief.

In order to prove their case, the claimant Komal appeared as PW-1 and tendered into evidence her duly sworn affidavit, Ex. PW-1/A and examined Rajan Verma as PW2, Pawan Kumar Crl. Ahlmad as PW3.

On the other hand, the respondent no. 3 did not lead any evidence despite availing sufficient opportunities and their evidence was closed by court order.

Learned Tribunal vide impugned Award dated 16.12.2014 held that the accident had taken place due to rash and negligent driving of canter No. HR-12-GA-0559 by respondent No.1 Ram Niwas. Under issue No.2, the claimants were held entitled to claim Rs.16,20,528/- from the respondents.

Feeling dis-satisfied with the aforesaid Award, present appeal has been filed by the insurance company.

Learned counsel for the appellant has submitted that it was a case of head on collusion and as such the presumption should have been drawn that accident has taken place due to rash and negligent driving of deceased and by the offending vehicle so, it is a case of contributory negligence.

I have considered the said submission but do not find any force in that submission.

The driver of the offending vehicle has not come into the witness box. No other evidence has been produced by the insurance company or other respondents that the accident has taken place due to rash and negligent driving by the deceased. On the other hand, the claimants have produced evidence on the file that the accident has taken place due to rash and negligent driving by the driver of offending vehicle. So, the above said contentions are meritless.

Learned counsel for the appellant has further submitted that route permit has not been produced and on account of that, the insurance company is not liable.

I have considered the said submission but do not find any force in that submission.

It is settled law that onus to prove the fact that there is violation of terms and conditions always lies on the insurance company and counsel for the appellant is fair enough to concede that no evidence has been produced before the Tribunal that owner of the offending vehicle was not holding a valid route permit.

Learned counsel for the appellant has further submitted that amount granted to the claimants is on higher side. Future prospects cannot be given in view of the fact that deceased was not a permanent employee and the matter has been referred to larger Bench of the Hon'ble Supreme Court in **National Insurance Co. Ltd. vs. Pushpa and others (SLP No.8058 of 2014 decided on 2.7.2014).** Authority **Rajesh and others vs. Rajbir Singh and others 2013 ACJ 1403** cannot be made applicable as the matter is still pending before the Hon'ble Apex Court. It is further contended that income has been assessed on higher side.

I have considered the said submission but do not find any force in that submission.

The point regarding grant of future prospects in respect of self employed person and fixed salaried person has been considered by this Court in authority **Balbir Kaur and others vs. State of Haryana and others (FAO No.3903 of 2012 decided on January 15th, 2014)** and the ratio of judgment in **Rajesh's case (supra)** has been followed by this Court in the said case. So, in these circumstances, I have no hesitation in holding that claimants are also entitled to claim amount in respect of future prospects of deceased.

The deceased was aged 45 years and in authority **Rajesh's case (supra),** the Hon'ble Apex Court has held that in the age group of 40-45 years, 30% should be added in respect of future prospects. The deceased was drawing pension of Rs.7931/- per month and his income has been taken as Rs.4500/- per month. The deceased was an Ex-Army personnel and as such the income of Rs.12,500/- per month, in these circumstances, cannot be said to be on higher side.

No other point has been urged.

In view of above discussion, the appeal is without any merit and the same stands dismissed.

7.7.2015. **(K.C.PURI)**
SN **JUDGE**