

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4019-2015 (O&M)
Date of Decision: July 6, 2015

National Insurance Co. Ltd.

...Appellant

Versus

Jaibir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Lalit Garg, Advocate,
for the appellant.

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

NARESH KUMAR SANGHI, J (Oral)

Present first appeal against order (FAO) has been filed by National Insurance Company Limited, challenging the award dated 4.3.2015, passed by learned Motor Accidents Claims Tribunal, Jind (for brevity, 'the Tribunal'), whereby a sum of ₹5,58,000/- (Rupees five lacs and fifty-eight thousand only) along with interest at the rate of nine percent per annum from the date of filing of the petition till realization, was awarded in favour of the husband and three minor children of Poonam (since deceased).

Learned counsel for the appellant-insurance company

has submitted that as per claimants' version the accident was witnessed by Sonu (PW4) and later he reported the matter to the police, on the basis of which FIR (Ex.P2) was recorded; the name of the driver and registration number of the offending vehicle were conspicuously missing from the first version put forth by Sonu (PW4); the occurrence alleged to have taken place on 1.8.2013, at about 9:00 a.m. and the FIR was registered on the same day, but the offending vehicle was impounded by the police on 6.8.2013, i.e. after about five days of the occurrence and till then there was no material with the investigating agency to connect the offending vehicle with the accident in question; deposition of Sub-Inspector of Police, Suraj Bhan (PW2), who had investigated the case, disclosed that one Randhir Singh, who was running a road-side restaurant (*Dhabha*) near the place of accident, had disclosed the registration number of the offending vehicle, but neither his statement under Section 161, Cr.P.C., was recorded nor said Randhir Singh was produced as a witness by the claimants; and that the offending vehicle was not got identified from Sonu (PW4), an eye-witness of the occurrence, therefore, learned Tribunal without there being any evidence on record to connect the offending vehicle with the accident in question, decided Issue No. 1 in favour of the claimants and against the driver-cum-owner and the

appellant-insurance company of the offending vehicle.

I have heard learned counsel for the appellant and with his able assistance gone through the material available on record.

As per the case built up by the claimants, on 1.8.2013, Poonam (since deceased), being a pillion rider on Discover Motorcycle, being driven by Sonu (PW4), was going on Safidon-Jind road and when reached near Dronacharya School, within the revenue estate of village Nirjan, TATA 1109 Canter bearing registration no. HR-56-7490, being driven by Satish son of Dilawar Singh, in a rash or negligent manner at a very fast speed and without observing the traffic rules, came from opposite side and coming towards wrong side of the road, straight away hit the motorcycle being occupied by Poonam and driven by Sonu (PW4). As a result thereof, Poonam sustained fatal injuries and succumbed to the injuries at the spot. The matter was reported to the police by Sonu (PW4), on the basis of which FIR No. 220, dated 1.8.2013, for the offences punishable under Sections 279, 304-A and 337, IPC, was registered at Police Station, Sadar, Jind.

The claimants further averred that Poonam (since deceased) was working at a brick-kiln at village Kharak and was earning ₹500/- (Rupees five hundred only) per day. ₹25,000/- (Rupees twenty-five thousand only) were spent on transportation

and last rites of the corpus of Poonam. The claimants claimed ₹20,00,000/- (Rupees twenty lacs only) along with interest at the rate of 18% per annum from the date of accident till realization of the awarded amount.

Notices of the claim petition were issued to the appellant-insurance company and driver-cum-registered owner of the offending vehicle. After their appearance, driver-cum-owner as well as appellant-insurance company filed their respective replies. The factum of accident was denied by both of them.

No replication was filed. From the pleadings of the parties, following issues were framed:-

- “1. Whether the accident in question has occurred due to the rash and negligent driving of offending vehicle TATA 1109 bearing registration No. HR-56-7490 by respondent No. 1 Satish in a rash and negligent manner in which Poonam wife of Jaibir has died as alleged? OPP*
- 2. If Issue no. 1 is proved in affirmative whether the petitioners are entitled to the amount of compensation if so how much and from whom they are entitled to receive? OPP*
- 3. Whether the driver of the offending vehicle bearing registration No. HR-56-7490 TATA 1109 was not holding a valid and effective driving licence at the time of the alleged accident? OPR2*
- 4. Relief.”*

In order to prove their case, claimants examined Ajmer Singh, Additional Ahlmad of the Court of learned Judicial Magistrate, Jind, as PW1; SI Suraj Bhan, who investigated the case, as PW2; Jaibir, claimant/husband of Poonam (since deceased), as PW3; Sonu, an eye-witness of the accident in question, as PW4; Dr. Sunil Chataule, Medical Officer, General Hospital, Jind, who had conducted autopsy of Poonam (since deceased), as PW5; and Sadhu Ram as PW6. The claimants placed on record copy of the postmortem report (Ex.P1), copy of FIR (Ex.P2) and income certificate of Poonam and her husband Jaibir (Ex.P3) and closed their case.

Driver-cum-owner of the offending vehicle (respondent No. 5) tendered the photostat copies of the report under Section 173, Cr.P.C. (Ex. R1); certificate (Ex. R2); receipt of deposit of vehicle No. HR-56-7490 (Ex.R3); insurance policy of the offending vehicle (Ex.R4); his driving licence (Ex.R5); and copy of registration certificate of the offending vehicle (Ex.R6) and closed his case.

The appellant-insurance company produced copy of insurance policy of the offending vehicle (Ex.R7) and closed its case.

While relying upon the postmortem report of Poonam

(Ex.P1); deposition of Sonu (PW4); copy of first information report (Ex.P2); copy of the charge-sheet (Ex.R1) (report under Section 173, Cr.P.C.) filed by the police and the ratio of the judgment delivered by Hon'ble the Supreme Court in the matter of **Iswar Bhai C. Patel alias Bachu Bhai Patel v. Harihar Behera and another**, 1999 (2) Civil Court Cases 1 (SC) and the judgment passed by this Court in the matter of **Girdhari Lal v. Radhey Sham and others**, 1993 (2) PLR 109, learned Tribunal held that the accident in question had taken place due to sole rash or negligent driving on the part of Satish, driver-cum-owner of the offending vehicle and, as such, Issue No. 1 was decided in favour of the claimants and against the driver-cum-owner and the appellant-insurance company.

While deciding Issue No. 2, learned Tribunal held that Poonam (since deceased) was aged about 30 years and was earning ₹3,000/- (Rupees three thousand only) per month. ₹1000/- (Rupees one thousand only) were deducted for her personal expenses and the annual dependency of the claimants was assessed as ₹24,000/- (Rupees twenty-four thousand only). Multiplier of 17 was applied and total dependency of the claimants was assessed as ₹4,08,000/- (Rupees four lacs and eight thousand only). Learned Tribunal while placing reliance on the judgment

delivered by Hon'ble the Supreme Court in the matter of **Rajesh and others v. Rajbir Singh and others**, 2013 (3) R.C.R. (Civil) 171, awarded a sum of ₹1,00,000/- (Rupees one lac only) under the head of 'consortium'; ₹25,000/- (Rupees twenty-five thousand only) for loss of care and guidance; and further a sum of ₹25,000/- (Rupee twenty-five thousand only) for funeral expenses etc. Therefore, a total sum of ₹5,58,000/- (Rupees five lacs and fifty-eight thousand only) along with interest at the rate of nine percent per annum from the date of institution of the petition till final realization was granted in favour of the claimants and against the owner-cum-driver and the appellant-insurance company.

Issue No. 3 was decided in favour of the driver-cum-owner of the offending vehicle holding that the appellant-insurance company had failed to substantiate that at the time of accident, the driver was not holding a valid driving licence.

Concededly, the number of the offending vehicle was not mentioned at the time of registration of the first information report (Ex.P2), however, it was averred that the Canter which caused the accident was of Red colour and the informant further informed that the driver could be identified if produced before him. During his deposition before learned Tribunal, Sonu (PW4) whose presence at the spot could not be denied since he was

driving the ill-fated motorcycle at the time of accident, did depose that the accident in question was caused by Satish (respondent No.5) while driving TATA Canter bearing Registration No. HR-56-7490. During investigation, Sub-Inspector of Police, Suraj Bhan (PW2) verified the fact from owner of the road-side restaurant (*Dhabha*) situate near the place of occurrence that the accident took place with TATA Canter bearing Registration No. HR-56-7490. Additional Ahlmad of the Court where the driver of the offending vehicle was facing prosecution for the offences punishable under Sections 279, 304-A and 337, IPC, deposed that the charges were framed against the driver of the offending vehicle.

In the matter of **Iswar Bhai C. Patel (supra)**, Hon'ble the Supreme Court has held that where a party does not enter in the witness box to make statement on oath in support of its pleadings, then adverse inference would be drawn that what was disclosed in the pleadings was not correct.

In the matter of **Girdhari Lal (supra)**, this Court has held that after completion of investigation, police submitted the charge-sheet (report under Section 173, Cr.P.C.) against the driver in the Court and he was facing trial in respect of the impugned accident, the said fact would *prima facie* suggest that the driver was responsible for causing the accident in question.

In view of totality of the facts and circumstances of the case, well based findings recorded by learned Tribunal cannot be set aside on the basis of the arguments raised by learned counsel for the appellant-insurance company. Resultantly, finding no force in the present appeal, the same is hereby dismissed.

(NARESH KUMAR SANGHI)
JUDGE

July 6, 2015
P Kapoor