

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

FAO No. 5260 of 2015(O&M)

Date of Decision: September 18 , 2015.

United India Insurance Company Ltd. APPELLANT (s)

Versus

Susma Rani and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Gopal Mittal, 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?

LISA GILL, J.

Present appeal has been preferred by United India Insurance Company Limited challenging award dated 04.05.2015 passed by learned Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as, the 'Tribunal') whereby compensation has been afforded to claimant/respondents No.1 to 4 on account of death of Rakesh Kumar.

Brief facts as revealed in the claim petition are that, Rakesh Kumar alongwith Gurbachan Singh, Ram Parkash, Sunita, Alka, Jyoti, Vikas, Navin Kumar, Rohit, Ashok Kumar @ Goldy, Peeju etc. had gone on 05.12.2012 to Ludhiana to attend a marriage. They were returning to Jalandhar in a Tempo

Traveler No. PB-01-9946 driven by Ashok Kumar @ Goldy after midnight. He was driving the Tempo Traveler at a moderate speed but at about 1.30 a.m. at night when their Tempo Traveler reached near Police Station Goraya, it struck against Eicher truck No. PB-10-CW-7991. Said Eicher truck was parked in the middle of metaled road without any parking lights, indicator, reflector or back-lights. There were no warning lights neither was there any indication of the truck being parked on the road. Due to negligent parking of the truck, accident took place in which occupants of the Tempo Traveler suffered serious injuries. Respondent No.1- Sushma Rani's husband and father of respondents No.2 to 4, Rakesh Kumar died alongwith Gurbachan Singh and Ashok Kumar @ Goldy. FIR No. 172 dated 06.12.2012 was registered under Sections 304A/279/337/338/427 IPC against the driver of the Eicher truck.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 was preferred by the claimants i.e., widow, two daughters and son of deceased Rakesh Kumar claiming compensation to the tune of ₹30 lacs on account of his death. Claim was contested by the respondents – owner and driver of the truck. Factum of the accident itself was denied. Story mentioned in the FIR as well as in the claim petition was stated to be concocted and baseless. Appellant – Insurance company also contested the claim petition. Apart from the denying factum of accident with the truck, it was pleaded that the driver of the offending truck was not holding a valid and effective driving licence at the time of accident and it was being plied without rout permit, fitness certificate and in violation of the provisions of the Motor Vehicles Act. Owner of the Tempo Traveler has also denied the factum of the accident.

Learned Tribunal framed the following issues:-

1. Whether Gurbachan Singh died in a motor vehicle accident which took place on 6.12.2012 at about 1.30 a.m. in the area of Police Station Goraya, on account of rash and negligent driving of Balwinder Singh respondent No.1, being driver of truck bearing registration No.PB-10-CW-7991?OPP
2. Whether the claimant being legal representative of Gurbachan Singh is entitled to compensation, if so, how much and from whom?OPP
3. Whether the respondent no.1 Balwinder Kumar being driver of truck bearing registration No.PB-10-CW-7991 was not holding a valid and effective driving license at the time of alleged accident?OPR No.3.
4. Whether truck bearing registration no.PB-10-CW-7991 was being plied without valid route permit and fitness certificate at the time of accident if so its effect?OPR No.3.
- 4-A. Whether the driver of tempo traveler No.PB-01-9946 was not holding a valid and effective driving licence at the time of accident?OPR No.5.
- 4-B. Whether the above said tempo traveler was being plied without valid fitness certificate and route permit, if so its effect?OPR No.5.
5. Relief.

On consideration of facts, circumstances and evidence on record, learned Tribunal concluded that the accident in question had occurred due to sheer negligence of the driver of the offending truck. He parked the truck in the middle of the road at midnight without parking lights/indicators on the rear side in the month of December knowing fully well that it was foggy. It is explained

that FIR was lodged by AW3 Pinku son of Ramesh Kumar, wrongly mentioned as Peeju son of Ramesh Kumar. AW3 Pinku himself was travelling in the Tempo Traveler. He has specifically deposed that the truck in question was parked without any rear lights, indicators or reflector.

Compensation to tune of ₹30 lacs was claimed with the averment that deceased – Rakesh Kumar was a cloth merchant earning ₹20,000/- per month. Learned Tribunal concluded the age of the deceased to be 47 years on the basis of post-mortem report, Ex.P3. In the absence of positive evidence to prove actual income of the deceased, learned Tribunal considered the deceased to be a skilled businessman, earning not less than ₹400/- per day i.e., ₹1,44,000/- per annum. Deduction of 1/4th was effected keeping in view the number of dependants and dependancy thus assessed as ₹1,08,000/- per annum. As per the guidelines laid down by the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77**, multiplier of 12 was applied by the Tribunal. Loss of dependancy calculated as ₹12,96,000/-. A sum of ₹1,00,000/- was awarded on account of loss of consortium and ₹25,000/- on account of funeral expenses. Total compensation of ₹14,21,000/- was awarded to claimants by the learned Tribunal.

Learned counsel for appellant – Insurance Company vehemently argues that present is a case of composite negligence. Reference is made to affidavit of AW3 Pinku son of Ramesh Kumar to suggest that Tempo Traveler was also driven at a high speed by its driver Ashok Kumar @ Goldy who also lost his life in this accident. Quantum of compensation is also impugned being on the higher side.

I have heard learned counsel for the appellant and gone through the available record.

Reference to cross-examination of AW3 Pinku son of Ramesh Kumar wherein he states that two vehicles can pass from the side of the truck as reflected from the photographs, can be of no avail to the appellant. It is proved on record that the truck in question was indeed parked on the metaled road without any parking lights, reflector or any sign to display its presence. In the month of December to have parked the truck in the middle of the road in itself is a clear indication of gross negligence on the part of the driver of the offending truck. It is common knowledge that in the month of December weather conditions are foggy. Perusal of the FIR does not reveal any such averment regarding the Tempo Traveler being driven in a rash and negligent manner. FIR contains narration of the facts at the first instance. It is not denied that the driver of the offending truck is facing criminal proceedings. In this situation it has been rightly held by the Tribunal that the present is not a case of composite negligence but a case of sole negligence on the part of the truck driver. There is no infirmity or illegality in the said finding.

In respect to the quantum of compensation, there is no evidence on record to justify assessment of income less than as assessed by the Tribunal. Deduction of 1/4th has been correctly effected and multiplier of 12 rightly applied in tune with the dictum of Hon'ble Supreme Court in Sarla Verma's case (supra). It is to be noted that only other dispensation is of ₹25,000/- on account of funeral expenses and ₹1,00,000/- on account of loss of consortium.

Learned counsel for the appellant is unable to point out any evidence on record which would warrant award of a lesser compensation.

No other argument has been raised.

In view of the above, there is no illegality, infirmity or perversity in the impugned award dated 04.05.2015 passed by learned Motor Accident Claims Tribunal, Jalandhar which would warrant interference by this Court.

This appeal is accordingly dismissed.

September 18 , 2015.
'om'

(LISA GILL)
JUDGE