

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

FAO No. 6020 of 2015(O&M)

Date of Decision: September 14 , 2015.

Shri Ram General Insurance Company Ltd. APPELLANT (s)

Versus

Kisturi @ Kasturi Devi and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

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

Appellant - Shri Ram General Insurance Company Limited has preferred the present appeal impugning award dated 28.04.2015 passed by the Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as, the 'Tribunal').

Brief facts of the case are that, Pawan Kumar (deceased) son of claimants Rekha Ram @ Rakha Ram and Smt.Kisturi @ Kasturi Devi, alongwith his co-villager and truck driver Sanjay were proceedings towards Loharu in a Dumper bearing registration No. HR-61A-6143 from Khanak, District Bhiwani after unloading the same. Said dumper was being driven by

Sanjay on a proper side of the road at an extremely low speed due to fog. Pawan Kumar (deceased) was sleeping on the backside of the driver seat. When they reached near village Singhani and Gignau, another truck bearing registration No. RJ-18GA-0539 being driven in a rash and negligent manner by respondent No.3 – Mehtab came from the back and dashed into the dumper. As a result of collision caused by the truck, Pawan Kumar fell down and received head injuries. Parents of Pawan Kumar were called on the spot, who removed him to Civil Hospital, Loharu with the help of one Bhupender son of Ramgopal. Pawan Kumar was declared brought dead at the hospital. FIR No.13 dated 17.01.2014, under Sections 279/304A IPC was registered against respondent No.3 – Mehtab, driver of the offending truck at Police Station Loharu on the statement of Sanjay son of Dayanand. Post-mortem was conducted at Civil Hospital, Loharu on 17.01.2014.

Claimant-parents of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of ₹50 lacs on account of the death of their son, who was aged 23 years at the time of accident. Apart from receiving salary of ₹10,000/- per month for his work as a cleaner on Dumper No. HR-61A-6143, he was also earning ₹12,000/- per month. His total earning was, thus, claimed to be ₹22,000/- per month.

Claim was resisted by all the respondents. It was denied that any accident took place with the offending truck. FIR was alleged to be falsely registered only with a view to extract compensation. In the written statement filed on behalf of appellant-Insurance Company, it was specifically alleged that deceased himself was negligent. He was hit by some unknown vehicle and the

FIR was falsely lodged. Claim petition was alleged to be a result of collusion between the claimants, respondent-owner and driver of the offending truck.

Learned Tribunal framed the following issues:-

- “1. Whether the accident occurred on 17.1.2014 at about 9.15 a.m. in the area of Singhani and Gignao, in the North 8.0 km from P.S. Loharu, causing death of Pawan Kumar son of Sh. Rekha Ram @ Rakha Ram, took place due to rash and negligent driving of respondent No.1, while driving the offending vehicle i.e., Truck bearing registration No. RJ-18/GA/0539?OPP
2. If issue No.1 is proved, whether the petitioners are entitled to the compensation, if so to what amount and from whom?OPP
3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident? OPR-1
4. Whether the insured has violated the terms and conditions of the insurance policy?OPR-3
5. Whether the present petition is maintainable in the present form?OPR
6. Relief.”

On consideration of the facts and circumstances as well as evidence on record, learned Tribunal specifically concluded that accident in which the deceased received fatal injuries had occurred due to the rash and negligent driving of the offending vehicle No. RJ-18GA-0539 by its driver, Mehtab.

While holding that claimants failed to prove the deceased to be earning ₹22,000/- per month, his income was considered to be ₹8,000/- per month. Age of the deceased was taken to be 25 years as mentioned in the post-mortem report, Ex.P2. Addition on account of loss of future prospects in terms of judgment of Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others, 2013(3) RCR(Civil)170(SC)** was afforded 50% deduction was effected, deceased being a bachelor.

However, the learned Tribunal applied a multiplier of 11 on the basis of the age of mother of the deceased. Loss of dependancy was worked out as ₹7,12,800/-. Total compensation of ₹8,37,800/- was awarded while awarding ₹1,00,000/- towards loss of love and affection and ₹25,000/- on account of funeral expenses.

Learned counsel for appellant – Insurance Company argues that as it is a case of head on collision, aspect of contributory negligence should have been considered by the learned Tribunal. Income of the deceased has wrongly been assessed as ₹8,000/- per month in the absence of any documentary evidence on record. Minimum wage available to a worker like the deceased in the year 2014, was much less therefore, compensation is required to be reworked. It is urged that compensation on account of loss of future prospects ought not to have been granted as the matter regarding grant of addition on account of future prospects to self-employed/privately employed persons stands referred to a larger Bench by Hon'ble Supreme Court vide order dated 02.07.2014 passed in SLP CC No.8058 of 2014 (National Insurance Company Ltd. v. Pushpa and others).

I have heard learned counsel for the appellant, gone through the file and photocopy of the record produced in Court.

It is not disputed that FIR No.13 dated 17.01.2014 stands registered against respondent No.3 – Mehtab. Challan/report under Section 173 Cr.P.C. has been placed on record. Simply because there is a head on collision, it cannot be presumed that there was contributory negligence on the part of the driver, Sanjay. A perusal of the written statement filed on behalf of appellant –

Insurance Company reveals that this is not even the case of the appellant. They have not pleaded contributory negligence. Specific stand is of false registration of the FIR and complete denial of the accident with the offending truck.

PW2 Sanjay Kumar has specifically deposed regarding the accident in question. He has clearly stated that accident in question had occurred on account of the rash and negligent driving of truck No.RJ-18GA-0539 by respondent – Mehtab. It has been held by Hon'ble Supreme Court in **Parmeshwari v. Amir Chand and others, 2011(2) RCR(Civil) 153** that registration of FIR should be accepted as *prima facie* evidence of accident having been caused in a rash and negligent manner by the accused therein. In these proceedings under the Motor Vehicles Act the matter has to be decided on preponderance of probabilities and strict proof beyond reasonable doubt as in criminal proceedings is not to be insisted upon for arriving at a conclusion of rash and negligent driving by the offending vehicle.

Apart from the fact that it is neither pleaded nor is there any evidence on record to indicate contributory negligence on the part of the driver of Dumper No. HR-61A-6143 in which deceased Pawan Kumar was travelling, driver of the offending vehicle, respondent No.3 – Mehtab has not even stepped into the witness box to controvert the events as unfolded by the claimants. It is not open for the appellant – Insurance Company to raise this ground for the first time in this appeal and that too dehors any pleadings to this effect.

Thus, there is no illegality or infirmity in the finding returned by the learned Tribunal that the accident in which the deceased received fatal injuries was caused due to the rash and negligent driving of truck No. RJ-18GA-0539 by its driver, respondent No.3 – Mehtab.

Contention of learned counsel for the appellant that income of the deceased has been wrongly assessed as ₹8,000/- per month, is devoid of any merit. It has been duly proved on record that the deceased was working as a cleaner on Dumper No.HR-61A-6143, which was being driven by Sanjay Kumar. PW2 Sanjay Kumar has deposed that he was a driver of the dumper whereas, Pawan Kumar (deceased) was employed as cleaner on the said dumper receiving a salary of ₹10,000/- per month. PW2 Sanjay Kumar himself owned the said dumper and has specifically deposed regarding employment of the deceased. Claimant – Kisturi @ Kasturi Devi PW1 has stated the deceased to be earning ₹12,000/- per month from agricultural pursuits. Fact that exact amount of salary drawn was not proved in the absence of any receipts etc., does not detract from the fact that the deceased was indeed working as a cleaner on the said dumper.

There is no merit in the argument that minimum wages as applicable in the year 2014 should have been assessed to be the income of the deceased. Minimum wages definitely afford a parameter of assessment but in the peculiar facts and circumstances of this case, the learned Tribunal has not erred in assessing the income of the deceased to be ₹8,000/- per month.

In respect to addition in income on account of loss of future prospects, learned counsel for the appellant is unable to deny that operation of the decision of the Hon'ble Supreme Court in Rajesh v. Rajbir's case (supra) has not been stayed. In a subsequent decision in Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347, the Hon'ble Supreme Court has awarded compensation on account of loss of future prospects in respect of deceased who

was self-employed/privately employed.

Learned counsel is unable to point out any ground which warrants reduction in the amount of compensation awarded by learned Tribunal to the claimants in this case.

Consequently, finding no illegality, infirmity or perversity in the impugned award dated 28.04.2015 passed by learned Motor Accident Claims Tribunal, Bhiwani which warrants reduction in the compensation awarded, this appeal is dismissed.

September 14 , 2015.
'om'

(LISA GILL)
JUDGE