

In the High Court of Punjab and Haryana at Chandigarh

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F.A.O. No.683 of 2015 (O&M)

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Date of decision:24.4.2015

IFFCO TOKIO General Insurance Company Ltd.

.....Appellant

v.

Anju Bala and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Nitin Mittal, Advocate for Mr. Paras Money Goyal,
Advocate the appellant.

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Inderjit Singh, J.

This appeal has been filed by IFFCO TOKIO General Insurance Company Ltd. (hereinafter referred to as 'the appellant') against Anju Bala, Ankit and Bimla Devi-claimants, Sukhjinder Singh-driver of offending motorcycle No.PB-57-B-5011, Harbhajan Singh Dhillon-owner of offending motorcycle and Jasmit Singh (impleaded as accused by the Police in criminal case)-respondents challenging the impugned award dated 6.4.2013 passed by the Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as 'the Tribunal'), vide which the claim petition filed by Anju Bala, Ankit and Bimla Devi-claimants has been accepted and an award of ₹17,60,000/- along with interest @7% per annum from the date of claim petition till actual payment has been passed in favour of the claimants and against respondents No.1 to 3 in the claim petition jointly and severally.

The brief facts of the case are that claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to

as 'the Act') for compensation from the respondents with regard to death in motor vehicle accident of Prem Kumar son of Ram Sumer, which took place on 15.5.2010 at about 8.30 p.m. in the area of Village Bus Stop Nurpur, G.T. Road, Jalandhar. The claimants have filed the claim petition being widow, minor son and mother of deceased Prem Kumar as his legal representatives. On 15.5.2010, Prem Kumar (since deceased) was proceeding from village Bulandpur to his office near railway crossing, Tanda Adda, Jalandhar to attend his duty on bicycle. When he reached near Village Nurpur bus stop, Jalandhar, one motorcycle bearing registration No.PB-57-B-5011 driven by Sukhjinder Singh (respondent No.1 in the claim petition) rashly and negligently and at a very high speed came there and struck against him, which resulted into injuries to Prem Kumar on his head and other parts of the body and he was removed to Johal Hospital and thereafter was referred to Oxford Hospital, Jalandhar and he expired on 20.5.2010 in ICU, Oxford Hospital, Jalandhar due to accidental injuries received by him. FIR No.135 dated 20.5.2010 was lodged at Police Station Maqsudan against respondent No.1 by Manohar Lal-brother of the deceased Prem Kumar. It is further stated that Prem Kumar was about 39 years of age and employed as Assistant Lineman in Punjab State Power corporation Limited and he was drawing the salary of ₹16,535/- per month. The claimants also incurred expenses of ₹1,35,000/- on the treatment of Prem Kumar to save his life. In the claim petition, respondent No.1 was driver of the offending motorcycle and respondent No.2-Harbhajan Singh Dhillon was its owner and respondent No.3-Insurance Co. was its authorized insurer at the time of the

alleged accident. Respondent No.4-Jasmit Singh has been impleaded on account of some Police criminal case against him.

Respondents No.1 and 4 were proceeded against ex parte. Respondent No.2 filed his written statement contesting the claim of the claimants. It is mainly stated that respondent No.2 along with Sukhjinder Singh was proceeding from Village Jaid to Jalandhar City on motorcycle and Harbhajan Singh Dhillon was driving the above motorcycle and Sukhjinder Singh was sitting as pillion rider thereupon. When they reached near Adda Nurpur, one person, who was later on identified as Prem Kumar, was crossing the road by picking the cycle on his shoulders in a drunkard condition. Prem Kumar got perplexed and fell down and many people collected there. Respondent No.2 also stopped there. Sukhjinder Singh pillion rider on the motorcycle of respondent No.2 also lost his control and fell down and he received injuries thereby. Respondent No.2 helped Prem Kumar as he was lying unattended at that time. Respondent No.1 Sukhjinder Singh his pillion rider also received injuries, who was removed to Johal Hospital, Jalandhar. He stated that no such accident took place. Respondent No.3-Insurance Company also filed reply stating that the accident in question is only hit and run case and no such accident took place.

I have heard learned counsel for the appellant-Insurance Company and have gone through the record.

Learned counsel for the appellant argued on one point that respondent No.1 was not driving the motorcycle. Challan has been

presented against Jasmit Singh-respondent No.6 herein (respondent No.4 in the claim petition). Therefore, the findings of the learned Tribunal that respondent No.1 Sukhjinder Singh was driving the motorcycle and caused the accident are incorrect.

After going through the record and after hearing learned counsel for the appellant, I find that first of all respondent No.1 Sukhjinder Singh and respondent No.4 Jasmit Singh are proceeded against ex parte and had not appeared before the Tribunal to contest the claim of the claimants. Neither Sukhjinder Singh nor Jasmit Singh came to the witness box to rebut the claim of the claimants. The brother of the deceased has got registered FIR against respondent No.1 Sukhjinder Singh. Eye witness has appeared in this case and deposed as per version of the claimants to prove rash and negligent driving by respondent No.1. Respondent No.2-owner of the offending vehicle though states that he was driving the motorcycle and respondent No.1 was sitting on pillion and no accident took place as alleged, but he admits that Sukhjinder Singh also received injuries at the spot on that day. The version of respondent No.2 is that Sukhjinder Singh, who was pillion rider on the motorcycle driven by him fell down there and received injuries. The mere fact that during investigation, the Police filed challan against Jasmit Singh is no ground to disbelieve the statement of the eye witness. PW-4 Manjit Singh is eye witness to the occurrence and has deposed regarding the accident. There is nothing in his cross-examination to disbelieve his statement. Moreover, the FIR has been got registered against Sukhjinder Singh-respondent. He also deposed that Sukhjinder

Singh-respondent No.1 also received injuries in this accident and people gathered there. Prem Kumar was removed to the hospital therefrom in injured condition. Sukhjinder Singh-respondent No.1 was also removed in injured condition. This version regarding injuries to Sukhjinder Singh were also admitted by respondent No.2.

Keeping in view these facts, I find that the findings of the learned Tribunal are correct and as per evidence on record and as per law. In no way, it can be held that respondent No.1 has not caused the accident or was not driving the motorcycle in rash and negligent manner. The evidence of the eye witness is not rebutted by any cogent evidence. The statement of the owner cannot be believed. The Tribunal has given the findings on the basis of evidence produced before it. In no way, it can be held that as the Investigating Officer has found Jasmit Singh driving the motorcycle, therefore falsifies the case of the claimants.

Therefore, from the above discussion, I find that the findings given by the Tribunal in the award dated 6.4.2013 are correct and as per law, which do not require any interference from this Court and the same are upheld. No other point has been argued by the learned counsel for the appellant.

Therefore, finding no merit in the appeal, the same is dismissed.

April 24, 2015.

(Inderjit Singh)
Judge

hsp