

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 8952 of 2014 (O&M)
Date of Decision:- 29.05.2015

United India Insurance Co. Ltd.

.....Appellant

Versus

Poonam Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. M.B. Jain, Advocate
for the appellant.

Mr. Gurinder Pal Singh, Advocate
for respondent Nos.1 to 7.

SHEKHER DHAWAN, J.

Appellant-Insurance Company has challenged the award dated 18.12.2013, passed by the Motor Accident Claims Tribunal, Rewari (hereinafter to be referred as 'The Tribunal'), whereby 'The Tribunal' awarded compensation in two separate claim petitions titled “Om Parkash Vs. Satpal and others” in MACT case RBT No.76 of 2011 and “Poonam Devi and others Vs. Satpal and others” in MACT case RBT No.149 of 2011.

2. Relevant facts for the purpose of decision of present appeal that claimants had filed claim petitions for seeking compensation as a motor vehicle accident was took place in the intervening night of 2/3.07.2011 between motor-cycle bearing registration No.HR-29P-2995 and offending car bearing registration No.HR47A-4225. Both the occupants of the motor-cycle, namely, Om Parkash and Monu sustained grievous injuries. They were taken to hospital. Monu died, whereas Om Parkash sustained grievous injuries. The matter was reported to the police. Respondents contested the claim petitions on different grounds and prayed that claim petitions be dismissed.

3. 'The Tribunal' after appreciating the evidence, returned the findings that the accident had taken place because of rash and negligent driving of respondent No.1 while driving car No.HR47A-4225 by rash and negligent manner, the respondents i.e. driver-owner and appellant-insurance company held liable to make payment of compensation. Being aggrieved of passing of said award, appellant-insurance company is in appeal before this Court.

4. At the time of arguments, Mr. M.B. Jain, learned counsel for the appellant-insurance company mainly took the plea that 'The Tribunal' fell in error while returning the finding that accident had taken place because of rash and negligent driving of respondent No.1 i.e. driver of the car. Because at the time of accident no vehicle number and even make of vehicle was mentioned, rather the same was given to the police after seven days. No name of the witness was mentioned in the FIR. PW4 has

repeated in his cross examination that he could not identify the driver. Learned counsel for the appellant also took the plea that mere registration of FIR or framing of charge is not sufficient to establish that the accident had taken place because of such a person. On this point, learned counsel for the appellant, place reliance upon judgment from this Court in case **Ram Karan and others Vs. Zile Singh and others**, Vol. CXXIX (2001-3) PLR, 125, wherein, such view was taken by this Court.

5. While arguing on the point of quantum of compensation, Mr. M.B. Jain, learned counsel for the appellant took the plea that 'The Tribunal' has awarded highly excessive amount of compensation because deceased was working as a labourer. There was no proof of his income still 'The Tribunal' added 50% of his earning on account of enhanced earnings. Such a controversy has already been referred to Hon'ble Supreme Court in case **Shashikala Vs. Gangalashmamma and another (Civil Appeal No.2836 of 2015) (Arising out of SLP (Civil) No.6061 of 2014.**

6. While arguing on this point, Mr. Gurinder Pal Singh, learned counsel for respondent Nos.1 to 7 took the plea that 'The Tribunal' has already appreciated the entire controversy and returned the finding that accident had taken place because of rash and negligent driving of respondent No.1 and none else. It had come in the investigation that Ram Niwas was available at the place of accident. Later on, he was associated for investigation and thereafter he appeared as PW1 before 'The Tribunal' and has fully supported the version of claimants. As regard to compensation, minimum income has already been taken by 'The

Tribunal'. In regard to enhanced earnings the matter has been referred to the larger Bench but there is no stay order passed by Hon'ble Supreme Court, half order having been passed that, such a enhancement cannot be ordered rather law on the point is settled 50% of the earnings are to be added on account of future enhanced earnings, keeping in view the age of the deceased. The deceased was 27 years of the age at the time of his death. The present appeal is without any merit and be dismissed.

7. Having considered the rival contentions raised by both the counsel, this Court is of the considered view that 'The Tribunal' has rightly returned the finding that accident had taken place because rash and negligent driving of respondent No.1. In fact there were two persons traveling on motorcycle. Both of them sustained grievous injured. Monu had died and Om Parkash sustained grievous injuries. The said Om Parkash appeared before 'The Tribunal' as PW3 and stated that accident had taken place because of rash and negligent driving of respondent No.1. The accident had taken place at about 12/12.30 in the mid night. Offending car bearing registration No.HR47A-4225 was being driven at a very fast speed and in a rash and negligent manner and struck against the motorcycle. Both of them were taken to hospital in injured condition. FIR Ex.P1 has been recorded on his statement. His version was supported by PW1 Ram Niwas on the basis of investigation by the police. As per report under Section 173 Cr.P.C (Ex.P9), rash and negligence was found to be on the part of respondent No.2. Thereafter, the Court applied its judicious mind and framed charge against respondent No.1 i.e. driver of offending

car and charges were framed against him for rash and negligent driving and he is facing trial. It is not a case of recording observation on the basis of framing of charge by the trial Court rather 'The Tribunal' returned the finding on the basis of positive evidence available on file by way of statement of injured, who is undisputedly eye witness of the case. He cannot be a planted witness as he had suffered grievous injuries and was taken to the hospital after the accident. Later on, police had found in investigation that the accident was seen by Ram Niwas. As such, his statement was recorded by the police and thereafter he appeared before 'The Tribunal' as PW1 and supported the version that accident had actual taken place because rash and negligent driving of respondent no.1. In such circumstances, non-mentioning of number of offending vehicles by Om Parkash cannot be made the basis so as to throw away the case of claimants because a person himself was in injured condition and his companion was driving the motorcycle had sustained grievous injuries and later on died because of that he had not committed any irregularity if he could not tell the number of vehicles in its earlier version before the police. It is nowhere required that the complete version should be by way of DDR/FIR but it is just an earliest information to the police regarding the occurrence, which was done in the present case and later on during investigation if any witness found to be an eye witness, there was nothing wrong with the police to associate him as witness. Later on, the said witness was duly cross examined by the respondents but nothing had come on the file to return the findings that the witness was not telling the

truth. More so, there was no reason for Om Parkash to falsely implicate respondent No.1 and the offending car and to allow the real culprit to scot free. He had no enmity with respondent No.1 to falsely implicate him in the present case and there is no such proof on the file. On these facts, the present case is distinguishable from Ram Karan Vs. Zile Case case's (**supra**), where 'The Tribunal' had rightly returned the finding that accident had taken place because of rash and negligent driving. More so, law on the point is settled that while deciding such like claim petitions, the claimant's case for compensation cannot be thrown away merely on the ground that no FIR was lodged or even if the criminal case was tried and failed. 'The Tribunal' has rightly placed reliance upon judgment from Hon'ble Supreme Court in case Ravi Vs. Badrinarain and others, 2011 (4) SCC 693.

8. As regards to quantum of compensation, 'The Tribunal' has rightly returned the findings, taking the minimum income of the deceased. Thereafter 50% was added on account of enhanced future earnings, as per keeping in view the fact that Monu was of the age of 27 years and was married, as per law laid down by Hon'ble Supreme Court in case Sarla Verma Vs. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77 and Rajesh and others Vs. Rajbir Singh and others, 2013(3), RCR (Civil) 170, consortium and 50% was to be added and that has rightly done by 'The Tribunal'.

9. As regards to referring of matter regarding quantum of compensation on account of enhanced future earnings to the larger Bench

by Hon'ble Supreme Court in **Shashikala** Vs. **Gangalashmamma and another in case** (supra), the matter has been referred but there was no stay order that 'The Tribunal' cannot pass an order for compensation on the basis of enhanced future earnings. Rather settled proposition of law is otherwise and in favour of the claimants.

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

May 29, 2015
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(**SHEKHER DHAWAN**)
Judge