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

FAO No.7383 of 2015 (O&M)
Date of decision: 11.12.2015

United India Insurance Company Limited
....Appellant
Versus

Naresh Rani and others
....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Suman Jain, Advocate,
for the appellant.

RITU BAHRI J. (Oral)

United India Insurance Company Limited-appellant has come up in appeal against the awarded dated 03.08.2015 passed by the Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.8,00,000/- has been awarded in favour of the claimants-respondent Nos. 1 to 5 on account of death of Kishan Lal in a motor vehicular accident which took place on 29.03.2014. Respondent No. 1 is widow, whereas respondent Nos.2 to 5 are children of deceased Kishan Lal

Brief facts of the case are that on 29.03.2014, deceased-Kishan Lal along with his wife, Naresh Rani (respondent No.1), mother-in-law Atmi Bai and relative Ashok Kumar were coming from village Bhirdana to Fatehabad in a private bus. Thereafter, they alighted at 5th milestone Fatehabad-Bhuna road and were waiting for another bus. In the meantime, a motorcycle bearing registration No.HR-22-J-9029 being driven by Kalu

Ram-respondent No.6 (respondent No.1 in the claim petition) in a rash and negligent manner came and struck against Kishan Lal, as a result of which, he received multiple injuries on his body. He was taken to General Hospital, Fatehabad for treatment, where he succumbed to his injuries. On the basis of statement made by Ashok Kumar, FIR No.178 dated 29.03.2014, under Sections 279/304-A IPC was registered against Kalu Ram at Police Station, Sadar, Fatehabad. Consequently, the claimants (respondent Nos. 1 to 5 herein) filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that Kishan Lal died due to a roadside accident which took place on account of rash and negligent driving of offending vehicle by Kalu Ram-respondent No.6 and thus, returned the finding on Issue No.1 in favour of the claimants-respondent Nos. 1 to 5. This finding is rightly based on the deposition of ASI Ishwar Singh, IO (PW-1), who stated that during investigation on 21.04.2014, Ashok Kumar (PW-2) made a supplementary statement (Ex.P2) to the effect that the accident was caused by a motorcycle bearing registration No.HR-22-J-9029. On 02.05.2014, the accused was produced before him by his father Harpal Singh. Ultimately, the claim petition was accepted and a sum of Rs.8,00,000/- was awarded as compensation in favour of the claimants. Feeling dissatisfied with the impugned award, the claimant-Insurance Company has preferred the present appeal.

I have heard learned counsel for the appellant and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Ashok

Kumar (PW-2) who was an eye witness of the accident and on whose statement the FIR was registered, tendered his affidavit as Ex.PW2/A stating therein that Kalu Ram, driver of the offending motorcycle, was squarely responsible for causing the accident. Naresh Rani (PW-3) tendered her affidavit as Ex.PW3/A and reiterated the version given in the claim petition. Ashok Kumar (PW-2) along with Naresh Rani (PW-3), Kishan Lal-deceased and Atmi Bai were coming from village Bhirdana to Fatehabad in a private bus. When they alighted at 5th milestone at Fatehaband-Bhuna road, the offending motorcycle being driven by Kalu Ram-respondent No.6 in a rash and negligent manner came and struck against Kishan Lal. Due to this accident, Kishan Lal rceived multiple injuries. This finding is further corroborated by ASI Ishwar Singh (PW-1), who was Investigating Officer of the case. After recording supplementary statement of Ashok Kumar, he searched for the motorcycle and its driver. During investigation, he came to know that the said accident was caused by Kalu Ram son of Harpal Sngh, resident of Bhuna. On 02.05.2014, accused Kalu Ram was produced before him by his father-Harpal Singh.

Kalu Ram, driver of the offending motorcycle appeared in the witness box as RW-1 and tendered his affidavit Ex.RW1/A. In his cross-examination, he stated that he had not moved any application to the higher authority regarding his false implication in this case. He admitted that he was facing a criminal trial. He further admitted that he was produced by his father before the police because the police visited his house many times regarding involvement of his motorcycle in the above said accident. In his supplementary statement, Ashok Kumar (PW-2) stated that the driver of the motorcycle fled from the spot along with motorcycle. On the date of accident, he got perplexed. There was no occasion for him to falsely implicate Kalu Ram, driver of the offending motorcycle, as he as carrying no enmity with him.

After going through the impugned Award, this Court is of the view that the Tribunal has rightly recorded finding on issue No.1 against the driver of offending motorcycle. Because of his rash and negligent driving, the accident had occurred and Kishan Lal received injuries which resulted into his death. The mere fact that number of the motorcycle and name of the driver was not mentioned in the FIR, will not be sufficient to disbelieve the statement of eye witness Ashok Kumar.

Learned counsel for the Insurance Company-appellant has further argued that income of the deceased has been taken at Rs.6000/- per month, which is on the higher side. Even this argument of learned counsel for the appellant is liable to be rejected as the case of the claimants was that the deceased was an Egg Store holder at village Bhirdana and used to earn Rs.10,000/- per month. However, in the absence of any proof of income, his income has been assessed as Rs.6000/- per month being that of a daily wager, out of which, $1/4^{th}$ was deducted as personal expenses of deceased. Monthly dependency of claimants came to Rs.4500/-. As per postmortem report (Ex.P5), deceased was 45 years of age at the time of death/accident and the multiplier of 14 was applied. Thus, the claimants were found entitled to compensation of Rs.7,56,000/- (Rs.4500 x 12 x 14). In addition to it, Rs.24,000/- were awarded to widow-claimant No.1 for loss of consortium. Besides this, a sum of Rs.20,000/- was awarded as funeral charges. Hence, the claim petition was accepted and the claimants were found entitled to total compensation of Rs.8,00,000/- along with interest @

7.5% per annum from the date of filing of the petition till realization.

After going through the impugned Award, no illegality, much less perversity has been found therein warranting interference by this Court. The Tribunal has assessed the compensation after appreciating evidence in the right perspective.

Resultantly, the present appeal is dismissed being devoid of any merit.

(RITU BAHRI)
JUDGE

11.12.2015
ajp