IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3439 of 2013(O&M)
Date of Decision: April 11, 2016

IFFCO TOKIO General Insurance Company Ltd. ...Appellant

Versus

Kusum Lata and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Ravinder Arora, Advocate for the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (IFFCO TOKIO General Insurance Company Limited) against the Award dated 18.2.2013 passed in MACT Case No.23 of 2012 by the Motor Accident Claims Tribunal (for short `the Tribunal') on account of the death of Yad Ram in a vehicular accident.

Brief facts of the case are that on 18.12.2011 at about 1.00 A.M., Yad Ram (deceased) along with Radhey Sham and Hukam Chand alighted from the train at Palwal. They all left the railway station on motorcycles for their homes in village Pelak. One motorcycle was being driven by deceased Yad Ram and Hukam Chand was the pillion rider. Another motorcycle was being driven by Radhey Sham. When they reached near village Basant Garh, a Truck bearing No.HR-35J-9958 was going ahead of their motorcycles. Its driver Ram Gopal-respondent No.5 suddenly applied breaks without giving any indication. The motorcycle of Yad Ram hit the offending vehicle and as a result of this, he sustained head injuries. Hukum Chand also sustained injuries in the accident in question. Driver of the offending vehicle drove away the vehicle towards Aligarh after the accident. Later on, Yad Ram succumbed to the injuries and his post-mortem examination was conducted in General Hospital, Palwal.

The dependants of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 22 years and earning Rs.10,000/- per month by serving in M/s Fast Track Foods Pvt. Ltd., New Delhi.

Upon notice, respondents No.5 and 6 (driver and owner) filed joint written statement controverting the case of the claimants and stating that their vehicle was falsely implicated in the case. Appellant – insurer filed separate written statement and pleaded collusion of the claimants and respondents No.5 and 6, besides taking other pleas.

Pleadings of the parties led to the framing of following issues:-

> "*1. Whether Yad Ram son of Hukam Chand had died due to injuries sustained in a Motor Vehicular Accident that took place on account of rash and negligent driving by its driver of vehicle no. HR38J-9958 owned by respondent No.2 and insured by respondent No.3? OPP*
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> *2. If issue No.1 is proved, whether petitioners are entitled to compensation, if so to what amount and from whom? OPP*
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> *3. Whether respondent No.1 was not holding a valid and effective driving license at the time of accident of conditions of insurance policy? OPR*
>
> *4. Whether the petitioner has no locus standi and cause of action to file the claim petition? OPR*
>
> *5. Relief.*"

Issue No.1 was decided in favour of the claimants and it was held that the accident had taken place due to rash and negligent driving of vehicle No.HR-35J-9958 by respondent Ram Gopal. As per the salary certificate of the deceased (Ex.P5) after deducting the amount of conveyance and other allowances, he was earning Rs.5200/- per month approximately. The Tribunal enhanced it by 50% towards future prospects and then considering the number of dependants (3) deducted 1/3rd towards personal and living expenses of the deceased. It applied the multiplier of 18 and total loss of income was assessed at Rs.11,23,200/-. Besides, claimants were also held entitled to compensation for expenses on funeral and last rites, loss of estate and loss of consortium. Overall, a compensation of Rs.11,63,200/- along with interest was awarded.

Arguments have been heard and paper-book perused with the assistance of Ld. Counsel for the appellant.

The Ld. Counsel has raised two points: (i) that the offending vehicle was not involved in the accident and (ii) the Tribunal should not have granted increase in the income of the deceased towards future prospects as his employment was not of permanent nature. He has argued that the matter regarding increase towards future prospects in the income of those, working in unorganised sector/ self-employed is referred to Larger Bench by Hon'ble the Supreme Court in **National Insurance Company Limited vs. Pushpa, 2015(9) SCC 166.**

While arguing on the first point, Ld. Counsel has contended that the FIR was registered against unknown vehicle and therefore, the Tribunal had no reason to believe the involvement of the offending vehicle (truck) in the accident. Indeed, the number of the vehicle was not given in the FIR registered on the day of the accident itself, but the matter was investigated by the Police of Police Station Chandchut and it was only thereafter that it filed report under Section 173 CrPC against Ram Gopal challaning him for the offence under Section 304-A, etc. IPC. It has also come in evidence that the Trial Court has also framed charge against the said driver for the offence under Sections 279, 338 and 304-A IPC.

In **Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109**, observations about the evidentiary value of pendency of criminal proceedings against the driver, in a case of compensation under the Motor Vehicles Act, were made as under:-

> *"xxx xxx xxx There is no denial that Radhey Shyam respondent was being tried on account of rash and negligent driving by the Additional Chief Judicial Magistrate in a case State v. Radhey Shyam. Thus, it is prima facie safe to conclude that the accident occurred on account of rash and negligent driving of Radhey Shyam respondent in which the claimant suffered injuries. xxx xxx xxx"*

In case of **Mallamma vs. Balaji and others, 2004 ACJ 368**, the Karnataka High Court while reversing the finding of the Tribunal on the issue of negligence, held as under:-

> *"12. Therefore, under these circumstances, I am of the considered view that the Tribunal has wrongly come to the conclusion and held that the claimant has not proved the negligence on the part of the driver of the milk van involved in the accident. Filing of the charge-sheet against the driver is also a prima facie case to hold that the driver of the said lorry was responsible for the accident and burden shifts on him to prove the same."*

In **The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC.APP.No.750/2006,** decided on 24.01.2014, while taking note of the decisions of the Hon'ble Supreme Court, it was observed by the Delhi High Court as under:-

> *"xxx xxx xxx In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.*
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> *21. Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have proved negligence of the driver of the offending vehicle"*

In view of the above factual and legal position, the finding of the Tribunal that the accident was caused due to rash and negligent driving of the offending truck is affirmed.

The second argument regarding grant of increase in the income of the deceased towards future prospects is also without merit.

In **Rajesh and others vs. Rajbir Singh and others**, **2013 ACJ 1403**, the Hon'ble Supreme Court has held that in case of self-employed or persons with fixed wages, below 40 years, there must be an addition of 50% to the actual income of the deceased.

This Court in various first appeals including **FAO No.1207 of 2014 titled "Reliance General Insurance Company Ltd. vs. Sayera Khatoon and others**" decided on 3.3.2014, **FAO No.1502 of 2015 titled "National Insurance Company Limited vs. Pushpa Singh Chauhan and others**" decided on 20.3.2015 and **FAO No.4299 of 2015 titled "Oriental Insurance Company Limited vs. Swarna Devi and others"** decided on 1.9.2015 has upheld the addition to the income towards future prospects, where, the deceased were either self-employed or working in un-organised sectors. The Special Leave Petitions filed against the aforesaid decisions have been dismissed by the Hon'ble Supreme Court. All these decisions are after the reference to the larger bench in **National Insurance Company Limited vs. Pushpa, 2015(9) SCC 166**.

The view taken in **Rajesh and others Vs. Rajbir and others (2013)9 SCC 54** has been followed by the Hon'ble Apex Court in **Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347**, as also by this Court in various decisions (referred to above), SLPs against which have been dismissed after the reference in **Pushpa's** case (supra). Thus the Tribunal has committed no error while allowing 50% addition in the income towards future prospects and granting compensation to the claimants accordingly.

No other point was argued.

Appeal dismissed.

April 11, 2016 **(HARINDER SINGH SIDHU)**
JUDGE

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