

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

FAO No.1903 of 2016(O&M)

Date of Decision: April 08, 2016

The New India Assurance Company Ltd.

...Appellant

Versus

Smt.Shashi Bala and others

...Respondents

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

Present: Mr.Vinod Gupta, Advocate for
the appellant – Insurance Company.

HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (New India Assurance Company Limited) against the award dated 8.1.2016 passed by Motor Accident Claims Tribunal, Faridabad (for short `the Tribunal), whereby, compensation of Rs.14,13,000/- along with interest was awarded to the claimants – respondents No.1 to 5 for the death of Dharam Kumar in a vehicular accident involving Tractor No.HR-30M-4318. It was also directed that the appellant – Insurance Company shall pay the Award amount at the first instance and then recover the same from the insured by executing the award.

On 16.4.2014, Dharam Kumar (deceased) along with his son Vivek Kumar was returning after attending the marriage party in Lakshya Garden Palwal in an auto rickshaw. They alighted from the auto rickshaw on Baghola turn at about 9.00 pm and were waiting for some another vehicle to reach their home. In the meantime, a tractor No.HR-30M-4318, driven by

respondent – Shyam Singh in a rash and negligent manner came and hit Dharam Kumar, as a result of which he suffered multiple injuries. He was immediately taken to Irene Cosmos Hospital, Palwal, from where, he was referred to Sarvodaya Hospital, Sector-8, Faridabad, where he succumbed to the injuries on 26.4.2014 during treatment. On the statement of Vivek Kumar, FIR No.241 dated 9.5.2014 under Sections 279/304-A IPC was registered in Police Station Sadar Palwal against respondent – Shyam Singh regarding the accident.

The claimants filed claim petition pleading that the deceased was 50 years old and was earning Rs.20,000/- per month by doing the business of selling utensils.

Driver and owner of the offending tractor in their separate written statements resisted the claim petition on the grounds of maintainability and suppression of material facts. They took the stand that the accident was not caused due to rash and negligent driving by respondent – Shyam Singh. Insurance Company in its separate written statement pleaded that Shyam Singh was not holding a valid driving licence to drive the offending vehicle on the date of accident, nor any intimation regarding the accident was ever given to it by the insured. It also took the ground of delay of 23 days in lodging the FIR regarding the accident.

On appreciation of evidence, the Tribunal taking note of the wages of an unskilled worker in the State of Haryana w.e.f. 1.3.2014 to 28.2.2015 at the rate of Rs.8100/- per month, assessed the income of the deceased at Rs.8000/- per month. $\frac{1}{4}$ th was deducted towards personal and living expenses, loss of dependency was calculated at Rs.6000/- per month

i.e. Rs.72,000/- per annum. Multiplier of 13 was applied as per the guidelines of the Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr**, 2009(6) SCC 121 and loss of dependency was held to be Rs.9,36,000/-. Besides, in view of **Rajesh and others vs. Rajbir Singh and others**, 2013 ACJ 1403, Rs.1 lac was awarded towards loss of consortium to the wife of the deceased and Rs.25,000/- towards funeral expenses. In all, compensation of Rs.10,61,000/- was awarded to the claimants.

Ld.counsel for the appellant- Insurance Company has assailed the finding of the Tribunal on issue No.1 i.e. regarding the involvement of the offending vehicle in the accident. It is stated that no postmortem was got conducted on the body of the deceased and that the FIR was also lodged after a delay of 23 days.

The following issue was framed by the Tribunal on the question put forth here in appeal:

“1. Whether Dharam Kumar son of Shri Chunni Lal had died in a motor vehicular accident which took place on 16.4.2014 at 9.00 p.m. in the area of village Baghola, Police Station Sadar Palwal due to rash and negligent driving of Tractor No.HR-30M-4318 by respondent No.1? OPP”

Vivek Kumar, son of the deceased, who was accompanying him at the time of the accident appeared in the witness box as PW7 and deposed that on 16.4.2014, when they were waiting for some transport to reach their house, at about 9.00 pm, the offending tractor No.HR-30M-4318 make Eicher being driven by respondent No.6 in a rash and negligent manner came and hit his father. He was immediately taken to the hospital, but he succumbed

to the injuries on 26.4.2014. He specifically deposed that the accident was caused due to rash and negligent driving of the offending tractor. He is the author of the FIR No.241 dated 9.5.2014 at Police Station Sadar Palwal. Further, to prove the issue, Ramdiya (PW6), Criminal Ahlmad in the court of Additional Chief Judicial Magistrate, Palwal appeared before the Tribunal along with the record of the FIR case, which was pending for prosecution evidence. He apprised the Court that charge in that case was framed against accused Shyam Singh (respondent No.6 herein) on 17.7.2014 under Section 279 and 304A IPC and the offending tractor was taken on superdari by its owner Idu (respondent No.7 herein) on 13.5.2014. He also proved the photocopies of registration certificate and driving licence as Ex.P11 and P12, respectively, original of which were available on the criminal case file. Nothing could be elicited from the testimonies of the above two witnesses, so as to disbelieve the involvement of the offending tractor in the accident.

The appellant – Insurance Company did not lead any evidence to rebut the above narrated evidence.

So far as the delay in lodging the FIR is concerned, no fault can be found with the view of the Tribunal that after the accident, the first and foremost concern of the relatives and friends of the injured is to save his life by providing him the best medical aid. While holding so, the Tribunal has also taken note of the decision of the Hon'ble Supreme Court in **Ravi versus Badrinarayan and others, 2011(4) SCC 693**, wherein, it has been observed:

“17. It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian

conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.”

This Court in **Girdhari Lal vs. Radhey Shyam and others,** **1993(2) PLR 109**, observed about the evidentiary value of pendency of criminal proceedings against the driver, in a case of compensation under the Motor Vehicles Act, 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.

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, no interference is called for in the findings recorded by the Tribunal on issue No.1.

No other point was raised.

Appeal dismissed.

April 08, 2016

**(HARINDER SINGH SIDHU)
JUDGE**

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