

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

FAO No.2313 of 2016(O&M)

Date of Decision: April 25, 2016

New India Assurance Company Ltd.

...Appellant

Versus

Smt.Sangeeta Narula and others

...Respondents

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

Present: Mr.Ashwani Talwar, 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 26.11.2015 passed by Motor Accident Claims Tribunal, Rewari (for short `the Tribunal), whereby, compensation of Rs.22,35,257/- along with interest was awarded to the claimants – respondents No.1 to 5 for the death of Vijay Bhushan Narula in a vehicular accident involving Haryana Roadways Bus No.HR-66A-1260.

On 12.8.2014, Vijay Bhushan Narula (deceased) had boarded the offending bus from IFFCO Chowk Bus Stop, Gurgaon for Rewari. At about 2.45 pm, when the bus reached near Haryana Roadways Workshop, Rewari, the conductor of the bus announced that the passengers for Rewari may get down. The driver stopped the bus in front of the Workshop and the passengers started disembarking from the bus. When Vijay Bhushan Narula was alighting from the bus, all of sudden, the driver started the bus as a result of which, he fell down on the road and was crushed under the rear tyre

of the bus. He was taken to Birendra Hospital, Rewari by the nearby fruits/vegetables vendors, who were known to the injured. He was admitted in the Hospital and underwent many surgeries. But he succumbed to the injuries on 18.10.2014. FIR No.302 dated 12.8.2014 under Sections 279/338 IPC was lodged against respondent No.6 at Police Station Model Town, Rewari on the statement of Vijay Bhushan Narula himself.

The claimants, who are widow and children of the deceased, filed claim petition pleading that the deceased was 52 years and was having good health. He was Ex-Municipal Counsellor/ Property Dealer and earning Rs.50,000/- per month.

Respondent No.6, driver of the alleged offending bus filed written statement averring that no accident was caused by Bus No.HR-66A-1260 as alleged by the claimants. He also stated that a wrong and false FIR had been lodged in collusion with the Police involving the offending vehicle. It was also stated that the deceased himself was at fault as it was in the process of getting down from the moving bus that he had sustained the injuries. Respondent No.7, owner of the bus denied the accident and pleaded false involvement of the offending vehicle. Appellant- Insurance Company in its written statement also took the same stand as pleaded by the driver and owner of the offending vehicle.

On appreciation of evidence that the deceased was a graduate, aged about 52 years, that he had been a Municipal Counsellor and he was providing good education to his children, the Ld. Tribunal assessed the income of the deceased at Rs.16000/- per month. $\frac{1}{4}$ th amount was deducted towards personal and living expenses and loss of dependency was

calculated at Rs.12000/- per month i.e. Rs.1,44,000/- per annum. Multiplier of 11 was applied as per the guide-lines 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.15,84,000/-. 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. The compensation was assessed under various heads as under:-

Sr.No.	Head of Compensation	Amount (in Rs.)
1.	Treatment expenses	4,41,257
2.	Special diet & attendant	5,000
3.	Loss of consortium	1,00,000
4.	Loss of Estate	20,000
5.	Expenses of last rites & transportation	25,000
6.	Loss of care and guidance for children (15,000/- each)	60,000
7.	Total dependency	15,84,000
	TOTAL	22,35,257

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 the FIR was lodged against unknown driver and respondent No.6 was arrested on 1.9.2014 i.e. after 18 days of the accident. It is also contended that no eye witness has been examined to prove the accident.

The following issue had been framed by the Tribunal.

“1. *Whether Vijay Bhushan Narula had died in a vehicular accident, which took place due to rash and negligent driving of*

the offending vehicle No.HR 66A-1260 by respondent No.1 as alleged in the petition? OPP”

The burden to prove the above issue was upon the claimants and they examined Rajiv Arora as PW1, an alleged eye witness of the accident. This witness specifically stated that on 12.8.2014 at about 2.45 pm, he had gone to purchase fruits from *Rehri* opposite Roadways Workshop, Rewari. The offending bus came from Gurgaon side and stopped there, and that while the passengers were alighting from the bus, all of sudden, the driver of the bus started driving the bus in rash and negligent manner, due to which, a passenger fell down on the road and was crushed under the rear tyre of the bus. This witness further deposed that he immediately rushed towards bus and identified the injured as Vijay Bhushan Narula, who was known to him as he was Ex-Municipal Counsellor. He brought the injured to Dr.Birendra Yadav Hospital, Rewari in an auto and telephonically informed the family members of the injured.

The accident, as narrated by the above eye-witness, was also testified by Sangeeta, widow of the deceased (PW4) who deposed that her husband Vijay Bhushan Narula died in a vehicular accident on 12.8.2014 near Haryana Roadways Workshop, Rewari.

Another witness, namely EHC Digamber Kumar was examined as PW2. He brought the record of FIR No.302 dated 12.8.2014 lodged under Sections 304A IPC, etc. at Police Station Model Town, Rewari. He also deposed that after completion of investigation in the matter, challan had already been submitted to the Court of Ilqa Magistrate against respondent No.6 Manoj Kumar, driver of the offending bus.

To rebut the above evidence regarding involvement of the

offending bus in the accident, wherein, Vijay Bhushan Narula lost his life, no evidence was led by the appellant – Insurance company.

So far as the delay in lodging the FIR is concerned, it needs to be kept in mind 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. The Hon'ble Supreme Court in **Ravi versus Badrinarayan and others, 2011(4) SCC 693** had 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 a recent case of **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 25, 2016

(HARINDER SINGH SIDHU)
JUDGE

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