

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

FAO No.2758 of 2016(O&M)

Date of Decision: May 20, 2016

IFFCO TOKIO General Insurance Company Ltd. ...Appellant

Versus

Bhinder Kaur and others ...Respondents

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

Present: Mr. Ravinder Arora, Advocate with
Mr. Neeraj Khanna, Advocate
the appellant – Insurance Company.

HARINDER SINGH SIDHU, J.

This is an appeal by Insurance Company (IFFCO TOKIO General Insurance Company Ltd.) against the Award dated 01.02.2016 passed in MACP No.192 of 2015 by Motor Accident Claims Tribunal, Patiala (for short 'the Tribunal') awarding compensation of Rs.25,33,000/- for the death of Gurpreet Singh in a vehicular accident.

Brief facts of the case are that on 25.4.2015, Gurpreet Singh (deceased) was returning from village Bhatian to village Khanpur on Scooter No.PB48A-1365 and at about 9.30 AM when he crossed Samrala Chowk, Khanna, then in the meantime one Maruti Car bearing No.PB-10AT-3312 which was being driven by its driver-Mohan Singh at a very high speed and in a rash and negligent manner without blowing the horn came from behind and hit the scooter of Gurpreet Singh. As a result of the accident, Gurpreet Singh died at the spot. FIR under Sections 279, 304A and 427 of the IPC was registered at PS Khanna.

The dependants of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was the only bread winner of the family, aged about 34 years and earning Rs.30,000/- per month as he was working as Turner with Indian Machine Tools and Dairy Farming.

Upon notice, respondents No.7 and 8 (owner and driver of the offending car) filed written statement controverting the case of the claimants and taking pleas with regard to maintainability, false claim and no negligence. Appellant – insurer filed separate written statement and pleaded collusion of the claimants and respondents No.7 and 8 .

On appreciation of evidence led before the Tribunal, it was held that the accident had taken place due to rash and negligent driving of vehicle No.PB-10AT-3312 by respondent Mohan Singh. As per income tax returns Ex.CI and Ex.C2, the annual income of deceased is Rs.197750/-. The Tribunal deducted 1/4th of it towards personal and living expenses of the deceased and assessed the annual dependency at Rs.1,48,311/-. It awarded compensation as under:-

Sr.No.	Heads of compensation	Amount (In Rs.)
1.	Amount of compensation with 12 months and 16 as multiplier (1,48,311x16=23,73,000)	23,73,000/-
2.	Compensation to the family members (children and family members other than wife) for loss of love and affection, deprivation of protection, social security, etc.	1,00,000/-
3	Compensation to the widow of the deceased for loss of love and affection, pains and suffering, loss of consortium, deprivation of	50,000/-

	protection, social security, etc.	
4	Funeral and ritual expenses	10,000/-
	TOTAL	Rs.25,33,000/-

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

The sole contention of Ld. Counsel raised on behalf of the appellant – Insurance Company is that the Tribunal erred in recording a finding of rashness and negligence against the driver of the offending bus. It is contended that there was no eye witness of the accident and even the FIR was lodged on the next day of the accident and that too without mentioning the number of the offending bus or naming its driver.

Regarding the rash and negligence of the driver of the offending bus, the Tribunal framed the following issue:-

“1. Whether Gurpreet Singh son of Jarnail Singh had died in a motor vehicle accident which took place on 25.4.2015 in the jurisdiction of PS Khanna due to rash and negligent driving of respondent No. 2 while driving Car No. PB-10AT-3312? OPP

While deciding the aforesaid issue, the Tribunal took into consideration the copy of the FIR (Ex.C7) registered at Police Station City Khanna, the report under Section 173 Cr.P.C. (Ex.R9) submitted by the Police against Mohan Singh for the offence under Section 304-A IPC and also the order of the Sub Divisional Judicial Magistrate, Khanna (Ex.P8) framing charge against Mohan Singh for causing the accident by his rash and negligent driving.

So far as the delay of one day in recording the FIR or non-

mentioning of the vehicle number or driver's name therein is concerned, the contention becomes meaningless in view of the fact that the matter was investigated by the Police and during investigation, Mohan Singh – respondent was found to have caused the accident by his rash and negligent act of driving the offending bus. Further, the Sub Divisional Judicial Magistrate, Khanna also passed the order framing charges against Mohan Singh.

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.

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, there is no ground to interfere with the finding of the Tribunal that the accident was caused due to rash and negligent driving of the offending bus.

No other point was raised.

Appeal dismissed.

May 20, 2016

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(HARINDER SINGH SIDHU)
JUDGE