

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

**FAO No. 3005 of 2016(O&M)  
Date of Decision: May 24, 2016**

United India Insurance Company Ltd. ...Appellant

Versus

Gurmit Kaur and others ...Respondents

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

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

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HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (United India Insurance Company Ltd.) against the Award dated 25.02.2016 passed in MACT Case No.41 of 2015 by the Motor Accident Claims Tribunal, Patiala (for short 'the Tribunal') granting compensation of Rs.12,55,000/- for the death of Lakhbir Singh @ Lakha in a vehicular accident.

Brief facts of the case are that Lakhbir Singh (since deceased) was employed as driver on Trailer Truck bearing No.PB-11-AE-9635, owned by Sukhpreet Singh – respondent No.4. On the intervening night of 4/5.6.2012, Lakhbir Singh was going to U.P driving the Trailer, wherein, a tractor was loaded. When he reached near village Pajonia, P.S. Haldaur, District Bijnore(UP), suddenly a truck bearing No.HR-68-6975 came from the opposite side driven by its driver in a rash and negligent manner, without giving any horn or indication and struck against the Trailer. As a result, the cabins of both the trucks caught fire and whole body of Lakhbir Singh was

burnt badly and he died at the spot. The driver and two helpers of the offending truck were also burnt and died at the spot. DDR No.31 dated 5.6.2012 was recorded by the police of P.S. Haldaur, District Bijnore regarding the accident.

The dependants of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation.

Upon notice, respondent No.3, owner of the offending truck, did not appear despite service and was proceeded against ex parte. The insurer of the offending truck-United India Insurance Company filed a separate written statement taking the plea that the deceased- Lakhbir Singh was not holding a valid and effective driving licence, route permit and fitness certificate at the time of alleged accident. The averments with regard to the age, avocation and income of the deceased Lakhbir Singh were also specifically denied by the insurer. Respondent No.4-Sukhpreet Singh and respondent No.5-Reliance General Insurance Company, owner and insurer of the truck driven by deceased Lakhbir Singh filed separate written statement objecting to the claim petition.

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

*“1. Whether in the intervening night of 04/05.06.2012 in the area of village Pajonia, P.S. Haldaur, District Bijnore (UP), the driver of the offending vehicle bearing registration No. HR-68-6975 owned by respondent No.1, drove the said vehicle in a rash and negligent manner and thereby caused the death of Lakhbir Singh@ Lakha who was driver of trailer truck bearing registration No.PB-11-AE-9635 owned by respondent No.3? OPP.*

*2. Whether the claimants are entitled to compensation from*

*the respondents, if so, to what extent and interest thereon, if any? OPP.*

*3. Whether the driver of vehicle bearing registration No.PB-11-AE-9635 was not holding a valid and effective driving licence, route permit and fitness certificate at the time of alleged accident? OPR*

*4. Whether the claim petition U/s 166 of the Motor Vehicle Act is not maintainable in the present form? OPR*

*5. Whether the claim petition is bad for mis joinder of parties and non-joinder of necessary parties.? OPR*

*6. Whether the claim petition filed by the claimants is not maintainable against respondent No.4 as the claimants being the LRs of deceased driver of respondent No. 3 cannot claim any thing from the insurer of the vehicle driven by the deceased? OPR No.4*

*7. 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 the offending vehicle i.e. truck bearing No.HR-68-6975 owned by respondent-Harnek Singh. In the absence of proof of income of the deceased, the Tribunal assessed his income at Rs.9000/- per month, considering the number of dependants (2) deducted 1/3rd towards his personal and living expenses. Multiplier of 15 was applied (age assessed at 39 years from the license of Lakhbir Singh) and total loss of income was assessed at Rs.10,80,000/-. Besides, Rs.1,00,000/- for 'loss of love and affection', Rs.50,000/- for 'loss of consortium' and Rs.25,000/- towards 'funeral expenses' were also awarded by the Tribunal.

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

While challenging the impugned award, Ld. counsel for the appellant - Insurance Company has only argued that since in the accident both the vehicles were burnt and their occupants had died and there being no eye-witness to the accident, the entire liability to pay the compensation could not be fastened upon the insurer of truck No.HR-68-6975. He argued that at the best it could be a case of contributory negligence only.

Having considered the submission, I don't find merit in the same. The accident had taken place near village Pajonia, Police Station Haldaur, District Bijnore, UP at the time of midnight. In the collision both the vehicles involved in the accident got burnt and the driver of truck No.PB-11-AE-9635 as also the driver and two helpers in truck No.HR-68-6975 (offending truck) died due to burnt injuries. Considering the time of the accident, there was no probability of finding an eye-witness to the accident. The owner of the offending vehicle also did not choose to come forward to controvert the pleadings of the claim petition. A DDR regarding the accident was also recorded in the police station. In these circumstances, the Tribunal which was dealing only with a claim petition filed under Section 166 of the Motor Vehicles Act was justified in relying upon the statements of the claimant-Gurmit Kaur (widow of deceased), Nirmal Singh and Harmesh Singh, though they were not eyewitnesses to the accident. These witnesses attributed the fault to the driver of truck No.HR-68-6975, whose owner had not appeared before the Tribunal despite service to controvert their version. In this background, there could be no better evidence than the one led by the claimants to prove the rash and negligence on the part of the driver of the offending vehicle.

The requirement of proof in a MACT case is not so stringent as in a criminal case. The Hon'ble Supreme Court in **Kusum Lata and others vs. Satbir and others, 2011(2) RCR(Civil) 379 (SC)**, while distinguishing the criminal trial from proceedings before the Tribunal has observed that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. It has been stressed that the Court must keep this distinction in mind. Strict proof of an accident caused by a particular vehicle in a particular manner may not be possible by the claimants. The claimants are merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

No evidence regarding the contributory negligence was led before the Tribunal by the respondent-Insurance Company. Accordingly, there is no ground to interfere with the finding of the Tribunal on the issue of rash and negligent driving by the driver of vehicle No.HR-68-6975.

No other point was raised.

Appeal dismissed.

May 24, 2016

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**( HARINDER SINGH SIDHU )**  
**JUDGE**