

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

FAO No.3075 of 2016(O&M)_
Date of Decision: May 25, 2016

The United India Insurance Company Limited ...Appellant

Versus

Ompati and others ...Respondents

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

Present: Mr. Manjari Nehru Kaul, Advocate and
Mr. Abhinandan Pandhi, Advocate for
the appellant – Insurance Company.

HARINDER SINGH SIDHU, J.

For the reasons mentioned in the application, delay of 5 days in filing the appeal is condoned subject to all just exceptions.

This is an appeal by the Insurance Company (The United India Insurance Company Limited) against the Award dated 06.02.2016 passed in Claim Petition No.112 of 2014 by the Motor Accident Claims Tribunal, Jind (for short 'the Tribunal'), whereby, a sum of Rs.16,50,000/- was awarded as compensation to the claimant – respondents (parents) for the death of Vijay son of Azad Singh in a vehicular accident.

Brief facts of the case are that on 10.07.2014 at about 10.00 a.m, Vijay (deceased) along with Vijay @ Bittu son of Satish was going to the canal for taking bath by riding motorcycle No.HR-31F-5388 being driven by the deceased himself. When they reached near the turn of village Ugalan, District Jind, then a Tata Trailer Truck bearing No.HR-39B-7232 being driven rashly and negligently by Harinam- respondent No.3 and

without blowing any horn, came from opposite side and by coming on the wrong side of the road, it struck against the motorcycle, as a result whereof, both the riders received multiple grievous injuries. Soon after the accident, Ravinder and Ashok also reached there and they shifted the injured to PGIMS Rohtak, where Vijay son of Azad Singh succumbed to the injuries during treatment. FIR No.234 dated 10.07.2014 under Sections 279/337/304-A IPC was registered against Harinam - respondent No.3 at Police Station Julana on the statement of Vijay @ Bittu son of Satish.

The parents of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 29 years and earning Rs.15,000/- per month by running a grocery shop , besides doing agriculture work.

Upon notice, respondents No.3 to 7 (driver and owners) submitted that no such accident involving vehicle bearing No.HR-39B-7232 ever took place and pleaded false implication. Appellant – insurer filed separate written statement and pleaded collusion.

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

- “1. Whether the accident in question resulting in the death of Vijay son of Azad Singh took place on 10.07.2014 on account of rash and negligent driving of respondent No.1 Harinam while driving Tata Trailer/Truck bearing No.HR-39B-7232? OPP*
- 2. If issue No.1 is proved in the affirmative, what amount of compensation the petitioners are entitled and from whom? OPP*
- 3. Whether the petition is not maintainable? OPR*
- 4. Whether the respondents no. 1 to 5 had violated terms and conditions of the insurance policy, if so, to what effect? OPR-6.*

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-39B-7232 by respondent Harinam. In the absence of proof of income of the deceased, the Tribunal assessed his notional income at Rs.10,000/- per month and addition of 50% was made towards future prospects (Rs.10000+Rs.5000=Rs.15000 per month). The deceased being unmarried, deduction of 50% was made towards his personal and living expenses. Multiplier of 17 was applied, assessing the loss of dependency at Rs.15,30,000/-. Besides Rs.1,00,000/- towards 'loss of love and affection' and Rs.20,000/- towards 'performance of last rites' were also awarded. In all, compensation of Rs.16,50,000/- was awarded to the claimant – respondents.

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

Two-fold argument has been raised; (i) that there was no mention of the vehicle in the FIR and thus, the involvement of the offending vehicle has been manipulated, and (ii) that the deceased was not wearing a helmet while driving the ill fated motorcycle, therefore, the Tribunal should have held it to be a case of contributory negligence.

So far as the issue of involvement of the offending vehicle in the accident is concerned, two eye witnesses, namely Azad and Ashok appeared before the Tribunal as PW2 and PW4, respectively, who stated that they witnessed the accident and that it was caused due to rash and negligent driving of the offending vehicle (Trailer Truck). Besides, FIR

No.234 under Sections 304-A, etc. IPC was registered on the same day in Police Station Julana regarding the accident. Though, there was no mention of number of the vehicle in the initial version recorded in the FIR, but the matter was investigated by the Police, which challaned Harinam for causing the accident vide its report under Section 173 Cr.P.C. (Exhibit P-15). The number of the offending vehicle was mentioned in the said report. Further, Dharmender, Criminal Ahlmad while appearing in the witness box as PW1 also stated that Harinam was facing trial for the offence under Section 304-A, etc. 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.

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”

On the question of contributory negligence in causing of accident due to non-wearing of helmet by the deceased, Ld. Counsel for the appellant- insurer has placed reliance on **Siby Paul vs. Praveen Kumar G.N. and others, 2010(5) RCR (Civil) 143**, to contend that since the deceased was not wearing helmet, therefore, he was liable for contributory

negligence.

In this case, the Division Bench of Kerala High Court was dealing with an appeal for enhancement of compensation, filed by injured and observed as under:-

*“... .. When protection that a helmet provides to a rider is statutorily recognised and when it is mandatory under statute for the riders and drivers of two wheelers to wear the same, we feel it is a matter to be considered by the Motor Accidents Claims Tribunal as to whether the injured in a motor bike accident had suffered head injury and if so, whether at the time of accident the driver or pillion rider, as the case may be, who claims compensation for head injury was wearing a helmet. If the protective head gear, namely, helmet, the use of which is mandatory under Section 129 of the Act, was not worn by the drivers or pillion riders who sustained head injury, then contributory negligence can be assumed, if not for causing the accident but for sustaining injury which could have been prevented or the impact of which could have been reduced through compliance of the statutory provision by wearing a helmet. In fact the want of helmet for the rider may not be contributory to the accident. However, the use of helmet would prevent head injury or at least reduce the impact of the injury in the event of accident for the driver and pillion rider of the bike or two wheeler. Therefore, in our opinion, **it is for the Tribunal to consider whether in case of claim of compensation for death or injury of drivers or pillion riders of two wheelers they were wearing helmet at the time of accident and if not whether wearing of helmet would have prevented the death or injury or reduced the impact of the injury and if the same should be reckoned as an aspect of contributory negligence for reducing the compensation amount...**”*

The aforesaid observations indicate that the High Court required that in case of claim of compensation of drivers or pillion riders of two wheelers involving head injury the Motor Accident Claims Tribunal should consider whether they were wearing helmet at the time of accident and if not whether wearing of helmet would have prevented the death or injury or reduced the impact of the injury and whether it should be reckoned as an aspect of contributory negligence for reducing the compensation amount.

I have gone through the records of the case, made available for perusal by Ld. Counsel for the appellant – insurer. In the written statement filed before the Tribunal, the appellant did not specifically raise the issue of non wearing of the helmet. It was also not the case of the appellant – insurer that the non-wearing of helmet contributed in causing the accident or that the death of the rider of the two-wheeler was the result of such violation of the Motor Vehicles Act. Since, the point was not raised before the Tribunal, so, there is no discussion about it in the impugned Award.

Moreover a Division Bench of Kerala High Court in a recent decision in **P.J. Jose v. Niyas (Kerala)**, 2016 (2) R.C.R.(Civil) 411 considered the earlier decision in *Siby Paul's* case (supra) and after going into the issue in detail, held that non-wearing of 'Helmet' may not have any relevance in causing the accident and could not be taken as a ground to fix contributory negligence on the part of the rider. It was observed :-

*“6. The learned counsel appearing for the insurance company submits that the consequence of non-wearing of the Helmet and the course that could be followed by the Tribunal in apportioning negligence had come up for consideration before a Division Bench of this Court and as per the judgment reported in **Siby Paul v. Praveen Kumar (2010(5) R.C.R.(Civil) 143 : 2009 (1) KLT 322**) it has been held that it*

*could be raised as a defence from the part of the insurance company to apportion the liability to an appropriate extent. The Tribunal, in the award, has referred to the instance of non-wearing of the ' Helmet ' leading to the death of the deceased and in turn, has fixed 25% contributory negligence on the part of the rider. No other aspect was discussed by the Tribunal in the award. We find it difficult to agree with the proposition that non- wearing of ' Helmet ', though an offence under the relevant provisions of the M.V.Act, could be taken as a ground to fix contributory negligence on the part of the rider. What is to be considered with regard to the apportionment of negligence is whether the party concerned had any role/part in causing or contributing to the accident. In other words, the consequence pursuant to the accident is not a circumstance to be weighed for fixation of negligence in causing the accident. With regard to the non-wearing of ' Helmet ' and resultant death because of the head injury, it is only a 'consequence' after the accident. Because of the non-wearing of ' Helmet ', the injury sustained to the head became fatal, leading to the death of the deceased. It is true that, had the deceased been wearing a ' Helmet ', probably his life could have been saved and the gravity of the injury would not have been this much severe, to have resulted in the death of the deceased. But the consequence because of the non-wearing of ' Helmet ' was not the reason for knocking down the rider of the motor cycle by the driver of the jeep which was coming from the opposite side and this being the position, negligence cannot be fixed on the shoulders of the rider of the vehicle merely for not wearing the ' Helmet '. The question is whether the matter should be referred to a Full Bench in view of the decision cited across the Bar i.e., **Siby Paul v. Praveen Kumar (2010(5) R.C.R.(Civil) 143 : 2009 (1) KLT 322)**.*

7. *During the course of hearing, it is brought to the notice of this Court by the learned counsel for the respondent/insurance company that the accident was actually on the wrong side of the rider of the motor cycle. At the time of accident the rider of the motor cycle had virtually crossed the middle line, whereas the jeep which was coming from the opposite side was maintaining the correct side of the road. We have perused the relevant records. It is revealed from the materials on record that the road is lying East-West. The motor cycle was proceeding from the West to the East and the jeep was coming from the opposite side. The road is having a total width of 6.04 metres and the accident was at a spot of 3.24 metres from the Northern end of the road; which means, the motor cycle had already crossed the middle line of the road. In other words, the rider of the motor cycle was not maintaining his correct side and as such, there is contribution on his part in causing the accident. To put it more clear, the accident was not*

because of the non- wearing of ' Helmet ' but because of the negligence on the part of the rider in keeping his side as well, and in such circumstances, the fixation of negligence to an extent of 25% on the part of the rider of the motor cycle is not liable to be deprecated under any circumstance, though non-wearing of ' Helmet ' may not have any relevance in causing the accident. In the said circumstances, we do not find it necessary to cause the matter to be referred to larger bench.”

The question has been considered by this Court in **Rupinder Sharma Alias Komal Sharma v. SPR Basant Kumar** (Punjab and Haryana) 2014 ACJ 869, wherein, it was held that merely because a person was not wearing a helmet he could not be stated to be negligent in causing the accident.

“4. The Tribunal was in error in finding that 20% deduction must be made for contributory negligence. Contributory negligence must be attributed to how the accident itself had taken place and not how he exposed himself to a danger of death. The concept is wrongly understood by the Judge in assuming that by not wearing helmet, he was guilty of contributory negligence . The contributory factor must be to the extent of collision and if he was not wearing helmet , he could not be stated to be a negligent "in causing the accident". He could be stated to be only negligent in not wearing helmet that "caused his death". I will not taking this to be the component for reduction of the damage assessed.”

A Division Bench of the Allahabad High Court in **New India Assurance Co. Ltd. v. Smt. Sharda Devi** (Allahabad)(D.B.) 2013 ACJ 652 has also observed similarly :

“5. The Tribunal has taken into consideration the statement of the wife, who was riding on the pillion, that his husband Rakesh was wearing helmet . Further in view of the findings based on oral evidence, which is not disputed that the motor cycle was being driven on the left side of the road and that Indica Car suddenly took a turn towards right and collided with the motor cycle, there was no question of applying principles of contributory negligence . The negligence in wearing helmet and allowing the children to ride on the back seat, common with most of lower middle class families

travelling on two wheelers cannot be taken as composite or contributory negligence on the part of the deceased, when it is found that he was liable for any wrong doing in driving or otherwise on account of which accident was caused. The breach of rules in driving two wheeler without helmet and driving it with three pillion riders, by itself cannot be treated as composite or contribution to negligence on his part.”

The afore-mentioned decisions make it clear that the injury or death of the rider of a two-wheeler is a subsequent event, whereas, the principle of 'contributory negligence' is about the contribution in causing the accident and, accordingly, it has been held that non-wearing of helmet, by itself, cannot be a reason for holding an accident to be result of 'contributory negligence'.

The present case, is one of a head-on collision of two vehicles. What is to be considered with regard to the apportionment of negligence is whether the rider of the offending motorcycle had any role/part in causing or contributing to the accident. In other words, the consequence (death of Vijay, rider of motorcycle) pursuant to the accident is not a circumstance to be weighed for fixation of negligence in causing the accident. The non-wearing of 'Helmet' and resultant death because of the head injury, is only a 'consequence' after the accident. Even with regard to the role of 'helmet' in saving the life of the injured Vijay, no evidence, worth the name, has been led before the Tribunal as to whether the deceased could be saved, had he been wearing a helmet.

No other point was argued.

Appeal is dismissed.

May 25, 2016

(HARINDER SINGH SIDHU)
JUDGE