

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

**FAO No.4758 of 2016 (O&M)
Date of Decision: October 22, 2016.**

National Insurance Company Limited

.....APPELLANT(s).

VERSUS

Krishna Devi and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Suri, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal by insurance company against the award dated 16.03.2016 passed by Motor Accident Claims Tribunal, Bhiwani (later referred to as 'the Tribunal'), whereby the Tribunal awarded compensation of ₹13,62,417/- for the death of Mewa Singh (later referred to as 'the deceased') husband of claimant No.1 father of claimants No.2 and 3 and son of claimants No.4 and 5 for his death in a motor vehicle accident with vehicle TATA-ACE bearing registration No.HR-61B-2994 (later referred to as 'the offending vehicle').

2. Case of the claimants, in brief, is that on 26.05.2014, the deceased along with Kuldeep son of Dharampal and Anil son of Balbir Singh was travelling on motorcycle bearing registration No.HR-18B-4683 and was returning from Loharu Court to his village. Motorcycle was being driven by Kuldeep son of Dharampal. When they reached near Chaudhary Bansi Lal College, Loharu, the offending vehicle came from behind. It was

being driven by Sandeep (respondent No.6) at a very high speed, in a rash and negligent manner. He abruptly took the offending vehicle towards right side of the road, as a result of which motorcycle of the deceased got crushed between the offending vehicle and the divider of the road, resulting in injuries to its occupants. Students of the college came to the spot and brought all the injured to Ishwar Hospital, Loharu from where the deceased was referred to Government Hospital, Bhiwani and was then shifted to V.K. Neurocare Hospital, Hisar, where he died on 31.05.2014. Post-mortem on the dead body of the deceased was conducted by Medical Officer, Government Hospital, Hisar on 31.05.2014. Kuldeep son of Dharampal had reported the matter to the police and FIR No.125 dated 26.05.2014 was registered at Police Station Loharu against Sandeep (respondent No.6). Initially FIR was registered for the offences punishable under Sections 279 and 336 IPC but later on after the death of Mewa Singh, offence punishable under Section 304-A IPC was added therein.

3. Relying on the statement of eyewitness Kuldeep Singh, the Tribunal recorded the findings that the accident was caused due to rash and negligent driving of the offending vehicle by its driver.

4. Learned counsel for the appellant has argued that the Tribunal while recording finding of the involvement of the offending vehicle relied on the statement of Kuldeep Singh, recording of FIR and presentation of challan by police against the driver of the offending vehicle in the criminal Court in which he is facing trial. The Tribunal has not taken note of this fact that number of the offending vehicle was not mentioned in the FIR and no explanation has come forth in this regard. Kuldeep Singh has stated that

he had noted the number of the offending vehicle but the FIR, which was recorded on his statement, did not find any mention of the same and this shows that he was not the eyewitness of the occurrence. No other independent witness has come forward to depose that offending vehicle was involved in the accident.

5. On giving a careful thought to submissions by learned counsel for appellant and on perusal of the record of the Tribunal, I find no merits therein for the reasons recorded in coming paras.

6. The appellant, driver and owner of the offending vehicle have denied the accident. The FIR, which was recorded immediately after the accident, records that the accident was caused by TATA-ACE vehicle which came from behind and hit the motorcycle on which the deceased was a pillion rider. It is not disputed that the offending vehicle was taken into possession by the police and the matter was investigated and after investigation, the police presented the challan against Sandeep, who was driving the offending vehicle at the time of the accident. He has been charge-sheeted by the Court for offences punishable under Sections 279, 336 and 304-A IPC and is facing trial.

7. Kuldeep Singh, eyewitness, while appearing as PW1, has stated that on the date of accident, he was driving motorcycle bearing Registration No.HR-18B-4683 and was returning from Loharu Court to their village. When they reached near Chaudhary Bansi Lal College, Loharu, the offending vehicle came from behind, which was being driven by respondent No.1 at a very high speed, in a rash and negligent manner. It took turn towards right side as a result of which, his motorcycle got crushed between

the offending vehicle and divider of the road and all the three occupants of the motorcycle received injuries which ultimately proved fatal for Mewa Singh. He gave registration number of the vehicle, which he noted down at the time of the accident. He denied that the number of the offending vehicle was not disclosed to the police by him at the time of recording his statement on the basis of which FIR was registered. He was not confronted with the contents of the FIR or any explanation was taken from him as to why the number of the offending vehicle was not mentioned therein. Had such a question been put to him, he would have given appropriate reply. It is a settled principle of law that the evidence produced before the Tribunal, is not to be scrutinised on the same parameters as it is analysed in criminal proceedings. Though the driver of the offending vehicle denied the accident, but he did not dare to step into the witness box to put forth his version so as to afford any opportunity to counsel for the claimants to shatter the veracity of his claim. The Tribunal has committed no error while relying on the testimony of Kuldeep Singh and the documentary evidence on file relating to registration FIR against respondent No.6 Sandeep and the charges framed by the trial Court against him for the offences punishable under Sections 279, 336 and 304-A IPC. The argument advanced by learned counsel for the appellant that involvement of the offending vehicle is not proved, has no merits.

8. Learned counsel for the appellant has further argued that three persons were going on a motorcycle, as such, the driver of the offending vehicle cannot be held liable for causing the accident. In support of his contention, he has relied on the observations of Co-ordinate Bench of this

Court in case of *Angrejo Devi & Others Vs. Jai Parkash & Others 2012(4) PLR 604*, wherein it has been observed that when three persons were going on a motorcycle and accident is caused, it is a case of contributory negligence. The observations made in case of *Angrejo Devi & Others Vs. Jai Parkash & Others (supra)* are not applicable to the facts of the present case. In that case, it was a head on collision and the Tribunal has taken the view that the accident may have been caused in a fraction of second and slight miscalculation of judgement and losing of control by driver of motorcycle aged 50 years. In this case, the offending vehicle had hit the motorcycle from behind thereby involving no role of the driver/occupants of the motorcycle in the accident. Triple riding on the motorcycle is an offence but in the facts and circumstances of the present case, in no manner indicate that the accident was caused due to the contributory negligence of the driver of the motorcycle on which the deceased was a pillion rider. The submissions of learned counsel for the appellant to this effect are also discarded being without merit.

9. As a sequel of my above discussion, this appeal has no merits.

Dismissed.

October 22, 2016.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No