

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

FAO No.8651 of 2015 (O&M)

Date of decision: 22.3.2016

Magma HDI General Insurance Company Ltd.

... Appellant

versus

Lalita and others

... Respondents

CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Rajneesh Malhotra, Advocate,
for the appellant

...

AMOL RATTAN SINGH, J. (Oral)

This is an appeal against the Award of the learned Motor Accident Claims Tribunal, Narnaul, dated 31.08.2015, partly allowing the claim petition filed by respondents No.1 to 6 herein (hereinafter to be referred to as the claimants), on account of the death of Hari Ram in a motor vehicle accident that took place on 07.05.2014.

Though the claimants had claimed compensation of Rs.80,00,000/-, the Motor Accident Claims Tribunal awarded Rs.16,49,000/-, alongwith interest @ 7.5% per annum, running from the date of the filing of the of the claim petition till its realization.

2. The appeal has been filed by the insurance company that had insured the “offending vehicle”, challenging the findings on the issue of negligence in driving, as also on the quantum of compensation awarded.

3. The facts leading up to the filing of the claim petition, as taken

from the Award of the Tribunal, are that on 07.05.2014, Hari Ram, deceased, was returning from a visit to his maternal uncle, at village Triyala Ki Dhani, Shahbajpur, on his motorcycle bearing registration No.RJ-02-SA-3357. When he reached near Asrawas village at about 7:00 p.m., on the Nangal Chaudhary road, a dumper truck bearing registration No.RJ-18GA/6333, being driven by respondent No.7 herein, Mukesh, allegedly in a rash and negligent manner, hit the motorcycle from behind.

Hari Ram is stated to have fallen down and was run over by the dumper truck. He died on the spot, with the motorcycle damaged.

Another motorcycle bearing registration No.HR-35F/4486 is also stated to have been hit by the said dumper truck, due to which the motorcyclist on that vehicle also fell down and received injuries.

The accident is stated to have been witnessed by Om Prakash and Ram Singh. The family members of the deceased, including Ram Kishan brother of the deceased, were informed and they reached the spot. The dead body was taken to the General Hospital at Narnaul.

Respondent No.1 is also stated to have disclosed his name and address. FIR No.109, dated 08.05.2014, was got registered at Police Station Mohindergarh, for the commission of offences punishable under Sections 279 and 304-A of the IPC.

4. It was contended that Hari Ram was 27 years old and was the sole bread winner of his family, running a shop in the name and style of M/s Hari Ram Timbers at Behror, earning about Rs.25,000/- per month and was also filing income tax returns.

5. The driver and the owner of the dumper truck (respondents

No.7 and 8 herein), filed a joint written statement, denying the factum of the accident and involvement of the vehicle, but further pleading that in case the Tribunal came to the conclusion that the accident had been caused by the said vehicle, then the liability to pay the compensation should be imposed on the respondent insurance company (present appellant), as the vehicle was duly insured with it, on the date of the alleged accident.

6. The appellant insurance company (respondent No.3 before the Tribunal), also denied the factum of the accident and further stated that in any case, the driver, i.e. respondent No.7 herein, was not holding an effective and valid driving licence at the time of accident.

7. The following issues were framed by the learned Motor Accident Claims Tribunal:-

- “1. Whether the motor vehicle accident which took place on 7.6.2014 at about 7.15 p.m. In the area of village Asrawas, caused on account of rash and negligent driving of vehicle bearing registration No.RJ-18GA-6333 by respondent No.1 resulting into death of Hari Ram? OPP
2. If issue No.1 is proved then what amount of compensation the petitioners are entitled to and from whom? OPP
3. Whether the vehicle in question was being driven by respondent No.1 in violation of terms and conditions of insurance policy? OPR-3
4. Relief.”

8. The claimants examined the widow of Hari Ram (respondent No.1 herein) as PW1, Ram Kishan as PW2, one Chhote Lal as PW3, Om

Prakash as PW4, Ram Singh as PW5 and police officials as PWs6 and 7, Duli Chand as PW8 and Vijaypal Yadav as PW9.

The respondents only examined the driver of the truck (respondent No.1 before the Tribunal) as RW1 and further tendered various documents, Exs.R1 to R4, by way of evidence.

9. On appraising the evidence and considering the pleadings, the Tribunal held respondent No.7 herein guilty of negligence in causing the accident and thereafter went on to award Rs.16,49,000/- as compensation, as already noticed.

10. Before this Court, Mr.Rajneesh Malhotra, learned counsel for the appellant submits that none of the persons who claimed to be eye witnesses to the accident, i.e. PW3 Chhote Lal, PW4 Om Parkash and PW5 Ram Singh, were even mentioned in the FIR and consequently, they are obviously, as per learned counsel, planted witnesses. Hence, he submits that with the name of the driver of the offending vehicle also not given in the FIR, the pleadings of the appellant before the learned Motor Accident Claims Tribunal, Narnaul, to the effect that no accident with the 'offending vehicle', i.e. dumper truck No.RJ-18GA-6333, actually took place, would be a correct assertion that has been erroneously ignored by the learned Tribunal.

He further submits that Rs.3,00,000/- has been given as compensation (Rs.1,00,000/- each to the three minor children of the deceased), whereas in the judgment of the Supreme Court in Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54, Rs.1,00,000/- in all was given for loss of love and affection, care and guidance, to the three children

of the deceased in that case. He, therefore, submits that the total compensation to be awarded to respondents No.2, 3 and 4 in the present case, even if the finding on negligence is not to be interfered with, would be Rs.1,00,000/- in all and not Rs.1,00,000/- each, as has been done by the learned Tribunal.

11. Having heard learned counsel for the appellant, I find myself unable to agree with the arguments raised by him, in view of the fact that as regards the issue of negligence being proved against respondent No.7, i.e. the driver of the 'offending vehicle', it was found by the learned Tribunal that the vehicle itself was apprehended at the spot and as such the question of the accident not having taken place does not arise. Thus, whether or not the three persons who were examined as eye witnesses, were mentioned or not, in the FIR, would lose significance at least qua the aspect of the factum of the accident, in view of the fact that the 'offending vehicle' was apprehended at the spot.

12. It is seen that the same contention as has been raised before this Court, of the accident not having taken place at all with the dumper truck in question, was also raised before the Tribunal, giving the same reasoning, i.e. that Chhote Lal, Om Prakash and Ram Singh (PWs 3 to 5) were not mentioned as witnesses in the FIR and have therefore been introduced as planted witnesses only before the Tribunal.

The Tribunal, however, found that the matter was investigated by the police and a report under Section 173 Cr.P.C. (Ex.P2 before the Tribunal) had been submitted by the police to the competent court thereafter, arraigning respondent No.7 as an accused therein. Subsequently,

even charges, as per charge sheet (Ex.P1), had been framed against respondent No.7 for the commission of offences punishable under Sections 279 and 304-A of the IPC.

Further, the post mortem report in respect of the deceased (Ex.P3), with the post mortem examination having been conducted on 08.05.2014, showed that the cause of death was due to complications from the injuries suffered by Hari Ram.

Hence, citing a judgment of this Court in **Lakhu Singh v. Uday Singh**, (2008 (1)) Latest Judicial Reports 209), the Tribunal went on to hold that the Motor Accident Claims Tribunal being seized of summary proceedings, was not to act as a criminal Court. Thus, as *prima-facie* evidence was available, of the occurrence having taken place as described, the negligence is not to be proved on the parameters of a criminal case.

13. I find no error in the reasoning given by the learned Tribunal in the impugned Award, in finding respondent No.7 negligent in causing the accident.

Undoubtedly, with the FIR having been registered only the next day, either due to not unknown laxity of the police, or otherwise, it would be otherwise strange that the three eye witnesses who stood in the witness box before the MACT were not even mentioned in the FIR. However, only on that count, i.e. with the possibility of them having been introduced as witnesses (who nevertheless testified to having witnessed the accident), this Court would not still interfere with the finding on negligence, with a report under Section 173 Cr.P.C. also having been submitted to the competent Court and a charge under Sections 279/304-A IPC also having been framed

against respondent No.7. Hence, I find no fault with the said finding of the Tribunal, in summary proceedings, with regard to the accident having been caused due to the negligence of respondent No.7.

This is especially so, as the dumper truck is stated to have been recovered from the spot, as already noticed.

14. Yet, it needs to be noticed, that it is stated in the Award, that respondent No.7 was actually stopped by people on the road, to whom he disclosed his name as Mukesh son of Banwari Lal, resident of Rajwara, after which he is shown to have fled away.

No doubt, it would, therefore, again be strange that his name does not find a mention in the FIR, as contended by the learned counsel for the appellant. However, a perusal of the Award, or even the grounds of appeal before this Court does not disclosed that Mukeshs' name did not find mention in the FIR.

Even presuming that is so (though not shown so by the learned counsel), I would still not disagree with the findings of the Tribunal on the issue of negligence, for the reason already given, i.e. that for the purpose of the summary proceedings, more than just a *prima-facie* case has been established against respondent No.7, with the dumper truck having been recovered from the spot and thereafter a report under Section 173 Cr.P.C. having been submitted to the competent Court, pursuant to the FIR lodged, with even charges framed against respondent No.7, i.e. the driver of the said truck.

Simply because respondent No.7 stood in the witness box before the Tribunal, in his own defence, stating that no accident took place,

does not negate the aforesaid facts.

Hence, for the aforesaid reasons, the arguments of Mr. Malhotra, on the issue of negligence, are rejected.

15. Coming next to the issue of compensation of Rs.1,00,000/- each wrongly having been awarded to the three minor children of the deceased; it is seen that the age of the said minor children, i.e. respondents No.2, 3 and 4, is given as 7 years, 6 years and 4 years respectively, i.e. all below 10 years of age. Therefore, I find no reason to interfere with the award of the learned Tribunal in that respect either. It may be noticed here that in the case of Vimal Kanwar and others vs. Kishore Dan and others, 2013(2) RCR (Civil) 945, a minor daughter of the deceased was awarded compensation of Rs.2,00,000/-, for the loss of love and affection of her father.

Therefore, with three children aged 7 years and below having lost their father at such tender ages, depriving them of his love and affection, care and guidance, for the rest of their lives, or even upto adulthood, I find no error in the compensation amount awarded by the Tribunal to respondents No.2, 3 and 4.

16. As regards the quantum of compensation awarded by the Tribunal on the basis of the income of the deceased proved before it, it is seen that the income of Rs.8000/- per month, assessed by the Tribunal, was on the basis of income tax returns proved before it, with an official of the Income Tax office (PW9) having proved such returns in the years 2012-13 and 2013-14. Though the appellants had claimed that the deceased was earning Rs.25,000/- per month, the income tax returns for the aforesaid years showed his business income to be Rs.11,600/- and 10,320/-,

respectively. Yet, his income was taken to be Rs.8000/- per month, presumably on account of deductions from the gross income.

On that net income of Rs.8000/- per month, a cut of 1/4th was applied by the Tribunal, towards the personal living expenses of the deceased, in view of the fact that he had a widow and three children, as also his parents (respondents No.5 and 6 herein) shown to be dependent upon him.

Even if the father is not taken to be his dependent, simply his wife and three children would make it four dependents on his income and as such, the personal living expenses to the extent of 1/4th of the deceaseds' income, was rightly applied by the Tribunal, in terms of the judgment in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121.

The monthly dependent income of the claimants, therefore, was correctly assessed to be Rs.6000/- by the Tribunal, with the annual dependency coming to Rs.72,000/-. Deceased Hari Rams' age having been proved to be 28 years, both by virtue of the post mortem report and the copy of his PAN Card exhibited before the Tribunal, the multiplier of 17 was also correctly applied, thereby bringing the total loss of income to the claimants to be Rs.12,24,000/-.

Funeral expenses of Rs.25,000/- and compensation for loss of consortium to respondent No.4 herein, of Rs.1,00,000/- are also amounts correctly awarded in view of the law laid down in *Rajesh and others vs. Rajbir Singh and Vimal Kanwars'* cases (supra). Hence, in this appeal of the insurance company, I see no ground for reduction of the amount of compensation awarded to the claimants-respondents No.1 to 6 herein, in any

case.

17. Learned counsel however submits that an appeal seeking enhancement of the award by the learned Tribunal has also been filed by the claimants, bearing FAO No.1311 of 2016, which is also listed today at Sr.No.252. That appeal has also been taken up, but since counsel for the appellants in that case is not present, has been adjourned to 05.07.2016.

Whether or not the claimants (respondents No.1 to 6 herein), are entitled to any enhancement of compensation, on any ground taken in that appeal, is an issue to be considered upon that appeal being taken up for hearing. In the present appeal, all that has been adjudicated upon is that there is no ground for interference with the Award of the Tribunal, as regards the question of negligence in causing the accident, and further, that there is no ground for reduction of the compensation awarded.

Thus, dismissal of the appeal of the insurance company would have no bearing on the merits of the grounds taken by the claimants in their appeal for enhancement of the compensation awarded by the learned Tribunal, which would be decided on its own merits.

18. Hence, having considered the arguments of learned counsel for the appellant and having considered the Award of the Tribunal, I find no merit in this appeal, either on the issue of the negligence of respondent No.7 in causing the accident, nor do I find any ground to reduce the compensation awarded by the Tribunal.

Consequently, this appeal is dismissed *in limine*, with no order as to costs.

22.3.2016

pk

PRAVEEN KUMAR
2016.04.21 16:07
I attest to the accuracy and
authenticity of this document

(AMOL RATTAN SINGH)
JUDGE