

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

(1) FAO No.1761 of 2017 (O&M)
Decided on:-April 26, 2017.

United India Insurance Company Limited.

.....Appellant.

Versus

Lalita Rani and others

.....Respondents.

(2) FAO No.1762 of 2017 (O&M)

United India Insurance Company Limited.

.....Appellant.

Versus

Lalita Rani and others

.....Respondents.

(3) FAO No.1763 of 2017 (O&M)

United India Insurance Company Limited.

.....Appellant.

Versus

Jagdish Chander and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Ram Avtar, Advocate
for the appellant.

HARI PAL VERMA, J.

By way of this common order, the aforementioned three appeals are being disposed of as the same have arisen out of the award dated 05.11.2016 passed by learned Motor Accidents Claims Tribunal, Hisar (for short, the Tribunal) in three claim petitions under Section 166 of the Motor Vehicles Act 1988 (for short, the Act) preferred by the claimants on account of death of Sakshi, Shelly and Gouri.

However, to facilitate the decision, facts have been taken from ***FAO No.1761 of 2017*** titled as ***United India Insurance Company Limited Versus Lalita Rani and others.***

Briefly stated, the respondents No.1 and 2-claimants have filed the claim petition under Section 166 of the Act for compensation on account of death of their daughter Shelly in a motor vehicular accident which took place on 06.01.2015. On that day, at about 1.30 PM, Sakshi along with Shelly and Gouri (since deceased) were travelling on a scooty and were going from Sector-5, Hansi to Jind Road, Hansi. When they reached Jind Road, Hansi, a tanker bearing registration No.HR-39B-2205 driven by respondent No.3 Luxman in a rash and negligent manner came from Jind side. The tanker struck against the scooty of Sakshi and due to this impact, all the three girls, namely, Sakshi, Shelly and Gouri sustained multiple injuries and died at the spot.

The claim petitions No.32-MACT of 2015 and No.33-MACT of 2015 both titled as ***Lalita Rani and another Versus Luxman and others***”

were filed seeking compensation on account of the death of Sakshi and Shelly respectively, whereas in the claim petition No.85-MACT of 2015 titled as ***Jagdish Chander and others Versus Laxman @ Laxaman Singh and others***, the claimants have sought compensation on account of death of Gouri.

The respondents No.3 and 4 (driver and owner of the tanker) while filing a joint written statement have denied the accident and have, rather, pleaded that a false case has been registered against the driver. However, it was admitted that the vehicle involved in the accident was insured with the appellant-insurance company.

Similarly, a separate written statement was filed on behalf of the appellant-insurance company raising preliminary objections regarding collusion, mis-joinder and non-joinder of necessary parties, locus standi, estoppel and maintainability. It has been pleaded that the driver i.e. respondent No.3 herein was not having a valid and effective driving licence at the time of alleged accident and no such accident has taken place with the offending vehicle. Rather, the claimants have falsely involved the offending vehicle in the present case.

The Tribunal, vide award dated 05.11.2016, while relying upon the statement of PW2 Balwant Rai coupled with the documents i.e. Report under Section 173 Cr.PC Ex.P22 and FIR Ex.P23 held that the accident had taken place due to sole rash and negligent driving of the offending vehicle driven by respondent Luxman and in the said accident, Sakshi, Shelly and

Gouri have died.

As regards the quantum of compensation, the Tribunal had framed issue No.2 i.e. 'Whether the petitioners in all the petitions are entitled to recover the compensation from the respondents, if so to what extent? OPP'.

The claimant Rakesh Kumar, who is father of deceased Sakshi and Shelly appeared in the witness box as PW1 and deposed that his daughters have died in a motor vehicular accident which took place on 06.01.2015. At the time of accident, Sakshi was a student and was studying in B.Com 1st year. Similarly, Shelly was also a student of B.Com 1st year and both the children, namely, Sakshi and Shelly were giving tuitions and were earning Rs.10,000/- per month each. The relationship of the claimants being the parents viz. a viz. the deceased was neither disputed nor challenged. Thus, it is established on record that the respondents-claimants, namely, Lalita Rani and Rakesh Kumar are the legal heirs of deceased Sakshi and Shelly. The claimants have pleaded the age of Sakshi to be 21 years of age. Her date of birth was 18.07.1994, whereas Shelly was 19 years of age, here date of birth being recorded as 10.02.1996.

Taking into consideration the facts and circumstances of the case and noticing that deceased Sakshi and Shelly were able-bodied girls, their income was assessed by the Tribunal as Rs.7,500/- per month, their annual income was assessed as Rs.90,000/-. The Tribunal has also considered the fact that deceased Sakshi and Shelly were unmarried at the

time of their death. Since the deceased were unmarried, they must be spending 50% of their income towards their personal expenses. Accordingly, dependency of the deceased was found Rs.45,000/- per annum. Considering the age of the claimants i.e. Lalita Rani and Rakesh Kumar as 40 years and 43 years respectively, having applied the principle laid down in ***Sarla Verma and others Versus Delhi Transport Corporation and another 2009 ACJ 1298***, the Tribunal applied the multiplier of '14' while assessing compensation of deceased Sakshi and Shelly. Thus, the amount of compensation on account of death of both the deceased was assessed as Rs.6,30,000/- each. Further, a sum of Rs.1,00,000/- each towards loss of love and affection was also granted by the Tribunal. Since the claimants had spent some amount on the transportation and funeral also, they were granted Rs.25,000/- each on that account along with another sum of Rs.25,000/- each as cost of litigation. Thus, in both the claim petitions, the respondents-claimants, namely, Lalita Rani and Rakesh Kumar were held entitled to the compensation of Rs.7,80,000/- on account of the death of their daughters, namely, Sakshi and Shelly.

Similarly, in the case of death of Gouri, the Tribunal has found that deceased Gouri, who died in the same accident, was a student and studying in B.A. 1st year at the time of accident. She was a brilliant student and received several awards during her education tenure. Considering the age of claimants Jagdish Chander and Komal Saini as 55 years and 45 years respectively and applying the principle laid down in ***Sarla Verma's case***

(*supra*), the multiplier of '11' was applied by the Tribunal in the case. Accordingly, for the death of Gouri, her parents were held entitled to the total compensation of Rs.6,45,000/- which included Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- on account of transportation and funeral ceremony and Rs.25,000/- as cost of litigation.

The appellant-insurance company has filed three separate appeals against each of the award.

Learned counsel for the appellant-insurance company has argued that the finding of the Tribunal on the issue of negligence is erroneous and against the documents brought on record. As per the site plan Ex.P24, the scooty on which the deceased were travelling was going from Sector-5, Hansi to Hansi-Jind road, whereas the tanker was coming from Jind to Hansi road. The place of accident shown as 'Mark A' in the site plan indicates that the tanker was going on his left side and the scooty was turning on the right towards tanker side while coming on Hansi-Jind road. As per Rules 8 and 9 of the Rules of Road Regulations and Section 118 of the Act, the driver of a motor vehicle shall slow down when approaching a road intersection, a road junction, pedestrian crossing or a road corner and shall not enter any such intersection, junction or crossing until he has become aware that he may do so without endangering the safety of person thereon. Deceased Sakshi, while driving the scooty, could not maintain control over it due to triple riding and, therefore, the alleged accident had occurred due to her contributory negligence.

He has further argued that three girls were riding on a scooty which was being driven by deceased Sakshi in violation of Section 128 of the Act. The Section provides that no driver of a two wheeled motorcycle shall carry more than one person in addition to himself on the motorcycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motorcycle behind the driver seat with appropriate safety measures. Thus, the scooty was being driven by deceased Sakshi in violation of the provisions of the Act and, therefore, the insurance company cannot be held liable to pay the compensation. The Tribunal has failed to appreciate the law laid down by the different Courts and the impugned award is against the well-settled principle of law and is based on conjectures and surmises.

I have heard learned counsel for the appellant-insurance company.

There is a clear finding of fact recorded by the Tribunal that the accident has taken place due to sole rash and negligent driving of the offending vehicle being driven by respondent Luxman in which Sakshi, Shelly and Gouri have died.

So far as the plea of learned counsel for the appellant that in this case, three persons were travelling on a scooty in violation of the provisions of Section 128 of the Act and it was a case of contributory negligence is concerned, the said contention has duly been discussed by the Tribunal while placing reliance upon the law laid down by this Court in ***New India***

Assurance Company Limited Versus Amanbir Kaur and others 2016(2) RCR (Civil) 909, wherein it has been held that where a truck being driven in a rash and negligent manner struck against an overloaded motorcycle on which four occupants were travelling resulting in the death of one motor rider, then it cannot be held that it was a case of contributory negligence. In the said judgment, this Court has relied upon ***Devi Singh Versus Vikram Singh 2008(2) RCR (Civil) 107*** wherein it has been held by Hon'ble Madhya Pradesh High Court that no doubt a vehicle which is overladen (more particularly a motorcycle which has 2-3 pillion riders) becomes that much harder to control, but that would not and cannot give rise to an inflexible presumption that it must be a contributory cause for every accident.

In the case in hand, the rash and negligent driving of the scooty is not proved and, therefore, it cannot be held that it is a case of contributory negligence. Interestingly, no such plea regarding contributory negligence was raised by the appellant-insurance company in its written statement and, therefore, no issue regarding contributory negligence was framed by the Tribunal.

There is nothing on record to show that the accident was caused because of negligence on the part of deceased Sakshi, who was driving the scooty, whereas deceased Shelly and Gouri were on the pillion seat or deceased Shelly and Gouri were instrumental in causing the accident in any manner. Thus, the Tribunal has rightly held that deceased Sakshi was travelling on the scooty with two persons on its pillion and, therefore, the

insurance company cannot take advantages of any contravention of the provisions of Section 128 of the Act.

In view of the above, this Court does not find any merit in the present appeals. Accordingly, the impugned award dated 05.11.2016 passed by the Tribunal is upheld and the present appeals are dismissed.

Photocopy of this order be placed on the files of connected cases.

April 26, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No