

121.

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

FAO-2578-2017 (O&M)

Date of decision:28.04.2017

BHARTI AXA GENERAL INSURANCE CO. LTD. Appellant

versus

SEEMA AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Rajbir Singh, Advocate,
for Mr. Sanjeev Goyal, Advocate,
for the appellant.

HARI PAL VERMA, J.

The appellant-Insurance Company has filed the present appeal against the award dated 07.01.2017 passed by Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal'), whereby the claim petition filed by the claimants (respondent No.1 to 5 herein) was partly allowed and the claimants were held entitled for compensation of ₹13,06,400/- for vehicular accident which took place on 13.06.2015.

Briefly stated, the claimants filed a claim petition under Sections 166 & 140 of the Motor Vehicles Act for grant of compensation on account of death of Manoj son of Tulsi Ram. The claimants are wife, mother, father, daughter and a minor son of the deceased. As per the claim petition, on 13.06.2015, Manoj along with Sunil Kumar were returning from Kokilavan Shanidev Mandir on

motorcycle bearing registration No.HR-72-9251, being driven by Sunil Kumar. When they reached in between Village Bahrola and Bamnikhera, Police Station Sadar Palwal, a car bearing registration No.HR-30L-6233 came there in a very rash and negligent manner, being driven by Govind (respondent No.7 herein). The car hit the motorcycle and as a result thereof, Manoj and Sunil Kumar fell down along with motorcycle and sustained multiple injuries on their person. Manoj was taken to Vardhan Hospital, Sohna, but due to his serious condition, he was referred to Safdarjang Hospital, Delhi, where he died on 17.06.2015 during treatment. For this accident, an FIR No.415 of 2015, under Sections 279, 337, 338, 304-A IPC was registered at Police Station Sadar Palwal.

The owner of the offending vehicle (respondent No.6 herein) and driver-Govind-respondent No.7 filed their joint written statement denying the case of the claimants on the ground that the claimants have no cause of action to file the claim petition and the same was bad for non-joinder and mis-joinder of necessary parties.

The appellant-Insurance Company contested the claim petition denying the case of the claimants and pleaded that the driver of the offending vehicle was not holding an effective and valid driving licence at the time of alleged accident. Therefore, the driver violated the terms & conditions of insurance policy. The appellant-Insurance Company has further denied its liability to pay compensation on the ground that the Insurance Company was not informed about the

accident either by the owner or the driver of the vehicle, although it was mandatory as per Section 134(c) of the Motor Vehicles Act to inform.

On issue No.1 i.e. “*Whether the accident in question, resulting into death of Manoj son of Tulsi took place due to rash and negligent driving of vehicle bearing registration No.HR-30-L-6233 (Car) by its driver-respondent no.2? OPP*”, the Tribunal has returned its finding that the accident, in question, took place on 13.06.2015 because of rash and negligent driving of offending vehicle by respondent No.7-Govind which resulted into death of Manoj. The Tribunal took the income of the deceased-Manoj as that of a labourer at that time i.e. ₹8,100/- per month as per Haryana Government notification. As per the pleadings and postmortem report (Ex.P3), the age of deceased-Manoj was taken to be 25 years at the time of his death. The Tribunal, vide award dated 07.01.2017, awarded a compensation of ₹13,06,400/- to the claimants on account of Manoj in the accident.

Aggrieved against the aforesaid award, the appellant-Insurance Company has filed the instant appeal.

Learned counsel for the appellant-Insurance Company has argued that in the case in hand, the accident took place on 13.06.2015, the deceased-Manoj died on 17.06.2015, but the FIR, in question, was registered on 11.07.2015. Despite such an inordinate delay in lodging the FIR, the Tribunal has accepted the claim petition. The Tribunal has

awarded compensation on higher side. While passing the award, the Tribunal has wrongly held that the alleged accident took place due to rash and negligent driving of the offending vehicle i.e. HR-30L-6233, despite the fact that the respondents No.1 to 5-claimants have miserably failed to prove on record that fact. He has further argued that present is a case of plantation of vehicle so as to get compensation in collusion with the driver and owner of the alleged offending vehicle. The factum of collusion between the claimants and owner and driver of the offending vehicle is apparent from the statement of RW1-Govind-respondent No.7, who, in his examination-in-chief has admitted the factum of accident, although disputed his negligence. In this manner, RW1-Govind in order to facilitate the amount of compensation to the claimants has helped them (claimants) very cleverly. Therefore, the findings of the Tribunal on issue No.1 are liable to be set aside.

I have heard learned counsel for the appellant.

One of the primary argument as raised by learned counsel by the appellant is that the FIR, in question, was registered after about 24 days of the accident. But this plea has been dealt with by the Tribunal and has held that since the claimant was busy in treatment of the deceased, so there is no delay in lodging the FIR. This Court cannot ignore the fact that in accidental cases when there are serious injuries to a person, the first priority of the attending/family members would be to get the best treatment for the injured, so that life of injured can be saved. Accordingly, the claimants have acted in a

natural manner. They have attended the injured first, so that, his life can be saved. But unfortunately after struggling for life for about 4/5 days, he died. The explanation given by the claimants in lodging the delayed FIR has rightly been accepted. The Tribunal has discussed the evidence as well as the statement of eyewitness PW-1 Sunil Kumar, who, while tendering evidence in his duly sworn affidavit Ex.PW1/A, had also deposed on the lines of claim petition i.e. "he along with deceased were returning from Kokilavan Shanidev Mandir on motorcycle bearing registration No.HR-72-9251, being driven by him, and when they reached in between Village Bahrola and Bamnikhera, Police Station Sadar Palwal, then a car bearing registration No.HR-30-L-6233 came there in a very rash and negligent manner, being driven by respondent No.7-Govind." As a result thereof, he and deceased fell down and sustained multiple injuries on their person. Manoj (deceased) was taken to Vardhan Hospital, Sohna, but due to his serious condition, he was referred to Safdarjang Hospital, Delhi, where he died on 17.06.2015 during treatment.

The deceased-Manoj was about 25 years of age and the Tribunal has rightly applied a multiplier of 18 as per the judgment of Hon'ble Supreme Court rendered in **Sarla Verma Versus Delhi Transport Corporation and another-2009(6) SCC 121**. His income was taken as ₹8,100/- for the year 2015-16 as notified by Haryana Government and the Tribunal has made deduction of 1/3rd towards his personal expenses and assessed loss of dependency as ₹11,66,400/-

(i.e. ₹8,100 -1/3=5,400/-x12=64,800/-x18=11,66,400/-). The Tribunal has also added an amount of ₹1,40,000/- towards other heads i.e. transportation, funeral expenses, loss of care and guidance, loss of consortium as per the decision of Hon'ble Supreme Court rendered in **Rajesh and others Versus Rajbir Singh and others-2013(3) RCR (Civil) 170(SC)**. In this manner, a total compensation of ₹13,06,400/- was awarded.

In view of above, this court does not find any illegality in the well reasoned award passed by the Tribunal and accordingly, the appeal filed by the Insurance Company stands dismissed.

(HARI PAL VERMA)
JUDGE

28.04.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No