

In the High Court of Punjab and Haryana at Chandigarh

FAO-5695 of 2017

Date of Decision: 6.9.2017

IFFCO TOKIA General Insurance Company Limited

---Appellant

versus

Chandro Devi and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ajay Singla, Advocate
for the appellant**

Rekha Mittal, J.

The insurance company is in appeal against award dated 28.3.2017 passed by the Motor Accidents Claims Tribunal, Narnaul (in short "the Tribunal") whereby compensation has been awarded in regard to death of Ravinder in a motor vehicular accident that took place on 19.2.2016.

Counsel for the appellant would urge that the appeal has been preferred by the insurance company to assail findings of the Tribunal on issue No. 1 as well as qua quantum of compensation awarded in favour of the claimants. To challenge findings on issue No. 1 attributing rashness and negligence to Pawan Kumar, driver-cum-owner of Maruti Van bearing No. HR-35L/1747, it has been urged that in the FIR registered at the behest of Ravi son of Ram Chander Saini PW2, real brother of deceased Ravinder, there is no reference to particulars of the offending vehicle and driver of the

said vehicle, sufficient to prove that Ravi, PW-2 was not present at the spot and has been introduced later to support cause of the claimant.

Another submission made by counsel is that the alleged offending vehicle has been planted later in connivance with the police, therefore, testimony of Ravi son of Ram Chander is not sufficient to establish that accident was caused due to rash and negligent driving of the offending vehicle by Pawan Kumar.

With regard to assessment of compensation, it has been argued that the Tribunal has extended benefit of increase in income for future prospects to the extent of 50% despite the fact that the matter in this regard is pending consideration before a Larger Bench of Hon'ble the Supreme Court of India in view of reference made in *National Insurance Co. Limited vs. Pushpa*. In addition, it is argued that the Tribunal has even allowed payment of interest on the amount of future prospects.

I have heard counsel for the appellant, perused the paper book particularly the award and photocopy of statement of Ravi PW-2 and report under Section 173 of the Code of Criminal Procedure made available during course of hearing.

The occurrence in question took place on 19.2.2016 and the FIR was registered with the police on the very same day. Ravi, author of the FIR appeared in the witness box, tendered into evidence his sworn affidavit Ex. PW2/A whereby he has narrated the occurrence in detail. Though Ravi PW2 in his cross examination has deposed that he got knowledge about driver of the offending vehicle from Ravi son of Lal Chand after going to hospital but he noticed registration number of the offending vehicle from

the spot but did not note the same in order to disclose in his statement recorded by the police. He further deposed that he and Ravi son of Lal Chand reached the hospital on his scooter. He was known to driver of the offending vehicle prior to the accident. Pawan Kumar driver-cum-owner of the offending vehicle did not appear in the witness box to counter testimony of Ravi PW2. Pawan Kumar withheld himself from the witness box without any justifiable reason, therefore, an adverse inference is to be drawn against Pawan Kumar that he caused the accident. There is nothing on record suggestive of the fact that the claimant or her family had any connection with Pawan Kumar to prove any collusion between the claimant and Pawan Kumar for getting vehicle of Pawan Kumar falsely involved in the occurrence. Under the circumstances, I do not find any reason to differ with findings recorded by the Tribunal upholding plea of the claimant that accident was caused due to rash and negligent driving of offending vehicle by Pawan Kumar respondent No. 2

So far as plea of the appellant allowing benefit of future prospects, the deceased was 35 years of age. There is nothing on record suggestive of the fact that he was suffering from any disability to afflict his capacity to work and earn livelihood for himself and his family. It is difficult to believe that he would have stagnated at income of Rs.4500/- had he remained alive. Under the circumstances, claimant cannot be denied benefit of increase in income for future prospects or interest thereon merely because a reference is pending before a Larger Bench of Hon'ble the Supreme Court till the judgment *Rajesh and others vs. Rajbir Singh and others 2013(3) RCR(Civil) 170* is varied or set aside.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

(Rekha Mittal)
Judge

6.9.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No