

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

FAO No.6014 of 2017(O&M)

Date of decision: 15.9.2017

Bajaj Allianz General Insurance Co. Ltd.Appellant

VERSUS

Kamli Devi and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Vandana Malhotra, Advocate for the appellant.

REKHA MITTAL, J.

CM No.19529-CII of 2017

For the reasons mentioned in the application, delay of 2 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.6014 of 2017

The present appeal directs challenge against award dated 05.04.2017 passed by the Motor Accidents Claims Tribunal, Barnala (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Gobind Kamat in a motor vehicular accident that took place on 28.10.2015.

Counsel for the appellant, at the outset, would inform that the instant appeal lays challenge to findings of the Tribunal qua rash and negligent driving of alleged offending vehicle i.e. car No.CH01-AG-0600 by Gursahib Singh as well as loss of dependency computed by the Tribunal.

To assail findings of the Tribunal on issue No.1, the sole submission made by counsel is that Sukhpreet Singh author of FIR No.59

dated 28.10.2015 and an alleged eye-witness to the occurrence was examined by the claimants to discharge onus of issue No.1. Though Sukhpreet Singh supported cause of the claimants before the Tribunal but when he was examined in the criminal trial pending against Gursahib Singh on the basis of FIR lodged by Sukhpreet Singh, he failed to connect driver of offending vehicle with the crime, sufficient to record a finding that testimony of Sukhpreet Singh is not worthy of credence and reliance, thus, cannot form the basis for upholding plea of the claimants that the accident was the result of rashness or/and negligence attributable to Gursahib Singh, driver of the offending vehicle. To bring home contention, counsel has invited attention of the Court to Annexure A-2, copy of testimony of Sukhpreet Singh PW-1 examined in criminal case. For this purpose, she has placed reliance upon judgment of this Court **United India Insurance Co. Ltd. Vs. Kamla Devi and others, 2010(53) RCR (Civil) 651**. Further reference has been made to judgment of Rajasthan High Court **Chatter Pal Singh Vs. National Insurance Co. Ltd. and others, 2014(65) RCR (Civil) 428**. In addition, she has relied upon notice of motion order dated 27.04.2017 issued in FAO No.2721 of 2017 captioned **Bajaj Allianz General Insurance Co. Ltd. Vs. Charanjit Kaur and others**.

With regard to assessment of compensation, it has been argued that the Tribunal has wrongly assessed income of the deceased at Rs.9,000/- per month on the basis of minimum wage of an unskilled labour. According to counsel, minimum wage of unskilled labour fixed by the State of Punjab and available at the relevant time was approximately Rs.6,000/- per month.

I have heard counsel for the appellant, perused the paper-book particularly the award and annexures appended with the appeal.

Kamli Devi, widow and children of deceased Gobind Kamat filed application for grant of compensation on the plea that Gobind Kamat was going towards petrol pump and car bearing No.CH01-AG-0600 driven by Gursahib Singh – respondent No.1 in a rash and negligent manner struck with the deceased and the accident was witnessed by Sukhpreet Singh. Sukhpreet Singh lodged FIR No.59 dated 28.10.2015 with Police Station Mehal Kalan indicting Gursahib Singh and offending vehicle for causing the accident. Sukhpreet Singh was examined as a witness and he tendered into evidence his affidavit Ex.PW1/A narrating the date, time and manner of the accident attributing rash and negligent driving to offending vehicle by its driver resulting in sustaining injuries by Gobind Kamat on the fateful day of 28.10.2015 at about 11:30 AM. Counsel for the appellant has not pointed out any materials/facts elicited in cross examination of Sukhpreet Singh to shatter evidential value of his testimony or create doubt in regard to his presence at the spot and having witnessed the occurrence. However, she has tried to find fault in findings of the Tribunal on issue no.1 primarily by placing reliance upon testimony of Sukhpreet Singh recorded in the criminal trial against Gursahib Singh. Admittedly, Sukhpreet Singh is not one of the claimants to seek compensation for the death of Gobind Kamat. There is nothing on record suggestive of the fact that Sukhpreet Singh had any connection whatsoever with Gobind Kamat or the claimants. Sukhpreet Singh in his testimony before the criminal Court has asserted his version that accident took place due to rash and negligent driving of car bearing No.CH-01-AG-0600 (offending vehicle) before the Tribunal. If Sukhpreet Singh, for the

reasons best known, refused to identify Gursahib Singh to be driver of the offending vehicle in the criminal trial, it is difficult to accept contention of the appellant that findings of the Tribunal on issue No.1 are liable to be set aside on this ground. In a case before the Tribunal, liability to pay compensation accrues if the accident results due to rash and negligent driving of the motor vehicle by its driver. Even if a witness to the accident is either not able to see the driver at the relevant time or otherwise fails to establish his identity, the owner of the vehicle cannot escape his liability to pay compensation. Under the circumstances, it is difficult to accept contention of the appellant that as Sukhpreet Singh failed to establish criminal liability of driver of the offending vehicle, findings of the Tribunal on issue no.1 are liable to be set aside.

In **Kamla Devi and others**' case (supra), the insurance company had challenged the liability on the ground that death alleged to have resulted by involvement of the insured's vehicle was a fabricated version and brought-out on collusion with the owner and driver and therefore, insurance company would not have been made liable. It was a case where no FIR had been lodged and there was no other evidence to support statement of Sitar Mohammad, an alleged eye-witness to the occurrence. In the criminal case, Sitar Mohammad did not support cause of the prosecution. This Court in para 5 of the judgment has noticed that a judgment in a criminal Court is not binding on the Tribunal; the non-filing of the FIR is not material; even the fact of involvement of the vehicle as found by the criminal Court is not binding. It has further been held that the Tribunal is competent to assess the evidence brought before it and take any independent decision but the point that has to be seen is whether there was any evidence worth its name before the Tribunal to come to a finding that a

particular vehicle was involved in the accident. It can be either that the version of Sitar Mohammad cannot be relied for because he has contradicted himself wholesale with the version given before the criminal Court or looked for other evidence which was placed before the Tribunal. Alternatively, if any explanation had been given by the witness as to why he deposed falsely before the criminal Court, even such an explanation could have been accepted to enter a finding that the accident took place only involving a particular insured's vehicle. In this case, no explanation has been given by the witness as to why he stated before the Criminal Court that he did not know which vehicle was involved in the accident. He would, on the other hand, defy that he ever made any such statement before the criminal Court, necessitating the statement before the criminal Court to be exhibited for contradiction before the Tribunal.

The facts noticed in the referred authority are entirely different from the facts of the case at hand. As has been noticed hereinbefore, Sukhpreet Singh lodged FIR with the police on the day of occurrence giving a detailed account of the accident in question by nominating the vehicle and driver responsible for the occurrence. The statement which was made before the criminal Court also makes reference of the accident having been caused due to rash and negligent driving of offending vehicle by its driver that hit the person going on motorcycle ahead of the witness. The statement before the criminal Court was recorded on 15.03.2016. It is not clear as to the date on which Sukhpreet Singh was examined before the Tribunal. It is not plea of the appellant that Sukhpreet Singh was confronted with his statement made before the criminal Court or his explanation was sought for his failure to connect the driver with the occurrence. That being so, the appellant cannot derive any

advantage to its contention from the referred authority for setting aside findings of the Tribunal on issue No.1. Similarly, the appellant cannot seek aid from the judgment of the Rajasthan High Court, in view of the peculiar facts and circumstances of the said case. The appellant surely cannot take aid of an order of notice of motion issued in FAO No.2721 of 2017 by a Co-ordinate Bench. Examined from any angle, contention of the appellant to assail findings of the Tribunal on issue no.1 is not meritorious and liable to be rejected.

This brings the Court to quantum of compensation assessed by the Tribunal. Though the Tribunal has assessed income of the deceased at Rs.9,000/- per month but the Tribunal has not extended benefit of increase in income for future prospects and has made deduction for personal expenses at a higher rate. Even the compensation awarded by the Tribunal under conventional heads does not appear to be adequate. If loss of dependency is computed by proper deduction and adding benefit of future prospects, compensation payable to the claimants would be more than what has been awarded by the Tribunal. As such, I do not find any reason to interfere in assessment of compensation at the behest of the insurance company. However, it is clarified that any observation recorded by this Court for the purpose of present appeal would not cause prejudice to right of the claimants for enhancement in case they prefer an appeal, to be decided on merits.

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

SEPTEMBER 15, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no