

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

**FAO-2486-2015 (O&M)
Date of Decision: 24.07.2018**

Anita Kumari & others

... Appellants

Versus

Yogesh & another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Jagtar Kureel, Advocate for the appellants.

Mr. Gopal Mittal, Advocate
for respondent No.2/Insurance company.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

This is claimants' appeal seeking enhancement of compensation.

2. Brief facts of the case are that a claim petition i.e. MACT Case No.581 of 02.12.2011 was filed before the Motor Accident Claims Tribunal, Chandigarh claiming compensation to the tune of Rs.7 lakhs along with interest at the rate of 9% per annum on account of death of Bhim Bahadur in a motor vehicle accident that took place on 13.08.2011.

3. Claimants were three daughters of the deceased. It was asserted in the claim petition that Bhim Bahadur (since deceased) was proceeding on a Kinetic Honda scooter and when he reached near Dariya, a scooter bearing registration No.PB-07-E-3893 being driven in a rash and negligent manner by one Yogesh S/o Krishan Lal came from behind and struck him. Due to the sudden impact, Bhim Bahadur lost control over his scooter and having fallen down suffered severe injuries on various parts of his body. Bhim Bahadur is stated to have succumbed to the injuries suffered in such

accident and the matter was reported to the police upon which FIR No.186, dated 13.08.2011, under Sections 279/337 IPC was registered at Police Station Industrial Area, Chandigarh. A case was set up that Bhim Bahadur was 60 years of age on the date of accident and was a vegetable and fruit vendor and was earning Rs.5500/- per month.

4. Owner of the offending scooter was not impleaded for the reason that the claimants were not aware of the same. Yogesh i.e. driver of the offending vehicle chose not to appear before the Tribunal despite service and was proceeded *ex parte*. Respondent No.3/Insurance Company contested the claim petition and filed a written statement.

5. The Tribunal framed the following issues vide order dated 19.11.2013:

“1. Whether Bhim Bahadur died due to injuries sustained by him in a road accident which took place on 13.08.2011 due to rash and negligent driving of scooter No.PB-07-E-3893 by its driver-respondent No.1? OPP

2. Whether the claimants are entitled to any compensation, if so, how much and from whom? OPP

3. Whether respondent No.1 was holding the valid and effective driving license at the time, if so, its effect? OPR-3

4. Relief.”

6. Insofar as issue No.1 was concerned, finding was returned in favour of the claimants and it was held that Bhim Bahadur had died in accident on account of rash and negligent driving by respondent No.1 i.e. Yogesh.

7. Insofar as quantum of compensation is concerned, income of the deceased had been accepted to be Rs.5500/- per month. Deduction of 1/3rd has been taken towards personal and living expenses of the deceased

and multiplier of 5 has been applied by taking the age of the deceased to be 60 years. Compensation amount computed was Rs.2,20,000/-. In addition thereto, Rs.25,000/- was awarded towards transportation and funeral expenses. Accordingly, the total compensation amount awarded was Rs.2,45,000/-.

8. Insofar as issue No.3 is concerned, Tribunal has taken a view that since driving license of Yogesh has not been produced by RW1-Dheeraj Kumar Thakur, who has brought the summoned record of the case titled as State Vs. Yogesh nor was any insurance policy of the offending vehicle bearing registration No.PB-07-E-3893 produced, accordingly, the Insurance Company was absolved of the liability and the compensation amount was held to be payable at the hands of respondent No.1/Yogesh only.

9. Even before this Court in the instant appeal, respondent No.1 i.e. driver of the offending scooter has chosen not to join proceedings. This is in spite of the fact that the alternate mode of service through publication was adopted in pursuance to orders dated 07.04.2017 passed in CM-7706-CII-2017 and due publication was made in the Punjabi newspaper 'Rojana Chardikala, Patiala'.

10. I have heard counsel for the appellants and Mr. Gopal Mittal, Advocate representing respondent No.2/Insurance Company.

11. This Court is of the considered view that the issue with regard to enhancement of compensation as set up on behalf of the appellants would not require examination by this Court at this stage. This is in the light of the fair stand taken by Mr. Mittal, Advocate, who concedes that the offending vehicle i.e. Scooter bearing registration No.PB-07-E-3893 was duly insured

with the National Insurance Company Limited as on the date of accident. Mr. Mittal, Advocate has even adverted to the averments made in the written statement filed in contest to the claim petition wherein also there was no denial to the insurance policy having been taken (in para 5 of the preliminary objections to the written statement).

12. In other words, the findings recorded by the Tribunal to the extent that there was no valid policy of the offending vehicle, are perverse.

13. Furthermore, I find that the Tribunal has erred in having held that Yogesh i.e. driver of the offending vehicle did not possess a driving license merely on the basis that RW1 i.e. Dheeraj Kumar Thakur, who had brought the summoned record pertaining to case file titled as State Versus Yogesh had not produced the driving license of Yogesh.

14. In view of the above, I deem it appropriate to remand the matter back to the Motor Accident Claims Tribunal, Chandigarh for deciding the *lis* afresh confined to issue No.3 and thereby to determine the question as regards liability of the Insurance Company with regard to the compensation amount that already stood determined vide award dated 08.08.2014.

15. Parties to appear before the Motor Accident Claims Tribunal, Chandigarh on 16.08.2018.

16. It is further directed that the Tribunal would make an earnest endeavour to finalize the issue expeditiously and in any case, within a period of four months from the date of receipt of a certified copy of this order.

17. A copy of the insurance policy of the offending vehicle has been furnished by learned counsel representing the Insurance Company to learned counsel for the appellants in Court today. In this view of the matter,

it would be open for the appellants to implead the registered owner of the offending vehicle in the proceedings to be now taken up by the Tribunal pursuant to the remand order.

18. Disposed of.

24.07.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |