

F.A.O. Nos. 3093, 3241 and 3246 of 2015(O&M) 1

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

F.A.O. No. 3093 of 2015(O&M)

Date of Decision: 10.12.2018

National Insurance Company Limited

.....Appellant.

Versus

Balkar and others

..... Respondents

AND

F.A.O. No. 3241 of 2015(O&M)

National Insurance Company Limited

.....Appellant.

Versus

Krishan and others

..... Respondents

AND

F.A.O. No. 3246 of 2015(O&M)

National Insurance Company Limited

.....Appellant.

Versus

Desh Raj and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.D.R.Bansal, Advocate
for the appellant(s).

Mr. I.S.Pabla, Advocate
for respondent no.1 in FAO Nos.3093 and 3241 of 2015 and
for respondents no.1 to 4 in FAO No. 3246 of 2015.

Mr. Rajiv Sidhu, Advocate
for respondents no.2 and 3 in FAO Nos.3093 and 3241 of 2015
and for respondents no.5 and 6 in FAO No. 3246 of 2015.

LISA GILL, J (Oral).

This order shall dispose of FAO No. 3093 of 2015, FAO No.

3241 of 2015 and FAO No. 3246 of 2015 as all the three (03) appeals arise from a common award dated 05.02.2015, passed by the learned Motor Accident Claims Tribunal, Kurukshetra (for short 'Tribunal'). For the sake of convenience, facts are being extracted from FAO No. 3093 of 2015.

Insurance Company has preferred all the three (03) appeals primarily challenging its liability to pay the compensation in all the three appeals.

Three claim petitions were filed by the respondents. MACT No. 402 of 2013 was filed by Desh Raj and others claiming compensation on account of death of Maya Devi.

MACT No. 403 of 2013 was filed by Balkar Singh claiming damages for the motorcycle which was damaged in the accident in question and MACT No. 404 of 2013 was filed by Krishan claiming compensation for the injuries received by him in the accident which took place on 29.07.2013.

As per averments in the claim petitions under Section 166 of the Motor Vehicles Act, Maya Devi along with her son Krishan after paying obeisance in a temple at village Mandi Dera, on 29.07.2013, were returning to their village on a motorcycle bearing registration no. HR-08-G-5233. Motorcycle was being driven by Krishan and Maya Devi was pillion riding. At about, 03.30.p.m., when they reached near village Malikpur, the offending car bearing registration no. HR-07-G-0049 driven by respondent no.1-Narender Kumar came in a rash and negligent manner from the side of village Malikpur and struck against their motorcycle. As a result thereof, Maya Devi and Krishan received serious, multiple injuries on various parts

of their body including fractures. Motorcycle in question was also badly damaged. Injured were shifted to Sarswati Mission, Hospital, Pehowa from where Maya Devi was referred to PGI Chandigarh but she was got admitted at Amar Hospital Bank Colony, Patiala. Maya Devi succumbed to her injuries on 16.08.2012. Compensation on account of death of Maya Devi, injuries to Krishan Kumar besides damage to the motorcycle was sought.

Respondents no.1 and 2 filed written statement denying the claim set up by the claimants.

Respondent no.3-Insurance Company, filed a written statement raising various preliminary objections and denying the averments on merits. Respondents prayed for dismissal of the petitions.

All the three petitions were consolidated vide order dated 20.03.2015 and proceedings were ordered to be recorded in MACT No. 229/13 (now No.402/13) titled as 'Desh Raj and others Vs. Narender Kumar and others'. Following issues were framed by the learned tribunal:-

1. Whether the motor vehicle accident dated 01.08.2012, is an outcome of rash and negligent driving of car bearing registration no. HR-07-G-0049 by Narender Kumar respondent no.1?OPP
2. Whether the respondent driver of aforesaid vehicle was not having valid driving license at the time of alleged accident?OPR
3. Whether the petitioners of instant claim petition are entitled to compensation on account of death of Smt. Maya Devi whereas petitioner Balkar Singh of MACP No. 230/2012 (New No. 404/2013) is entitled to compensation on account of damages to his motorcycle no. HR-08-G-5233 mark Splendor and claimant Krishan Kumar of MACT Cas No. 231/2012 (New No. 403/2012) is entitled to compensation on account of injuries sustained by him in the aforesaid accident? If so, in what amount and from whom?OPP
4. Relief.

Both the parties led evidence in support of their respective

claim/stands.

Learned Tribunal on consideration of the evidence on record, concluded that the accident in question took place due to the rash and negligent driving of the offending vehicle i.e. a car bearing registration no. HR-07-G-0049 by respondent no.1-Narender Kumar. Learned tribunal awarded a total sum of ₹10,65,000/- in MACP No. 402 of 2013 filed by Desh Raj and others, a sum of ₹10,000/- in MACP No. 403 of 2013 filed by Balkar Singh and ₹26,500/- as compensation in MACP No. 404 of 2013 filed by Krishan alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realization.

Aggrieved therefrom, present appeals have been filed by the Insurance Company.

Learned counsel for the appellant-Insurance Company vehemently argues that it is not proved on record that the accident in question took place due to rash and negligent driving of the offending car as claimed. It is contended that the FIR in question was registered after an inordinate delay of two (02) days. It is further submitted that the said accident allegedly took place at 03.30.p.m., but the injured were admitted in the hospital at 08.29.p.m, though distance between the place of occurrence and the hospital is less than 10 km. There is no explanation as to why ruqa was not sent immediately by the doctor on 29.07.2013. Accident in question took place on 29.07.2013, whereas FIR No. 88 was registered on 01.08.2012. Collusion between the claimants, driver and owner of the offending car was pleaded. It is submitted that false implication of the offending vehicle and its driver is possible. It is submitted that one Balkar

Singh had got admitted Maya Devi and Krishan to the hospital. There is no explanation as to why FIR was not lodged immediately by him. The driver of the offending car was arrested much later on 06.08.2012 on the asking and identification by Krishan. Moreover, driver of the offending car has been acquitted by the learned trial Court vide judgment dated 07.02.2015, as PW-4-Krishan did not even identify the accused. No independent witness has been examined by the claimants to prove the accident in question due to rash and negligent driving of the offending car.

Learned counsel further submits that PW-1-Dr. V.K.Gupta, Casualty Medical Officer, Saraswati, Mission Hospital, Pehowa, has admitted the cuttings in the MLR which was prepared belatedly on 31.07.2012. There is no explanation forthcoming to explain the said discrepancy. Injured-Krishan and Maya Devi (deceased) were admitted at Saraswati, Mission Hospital, Pehowa by Balkar Singh i.e., the brother and son respectively of Krishan and Maya Devi. It is thus prayed that the impugned award be set aside thereby dismissing all the three claim petitions. Insurance company in any case, it is submitted cannot be held liable to pay the compensation.

Learned counsel for the respondents while refuting the abovesaid arguments submit that the learned tribunal has rightly proceeded to conclude that the accident in question occurred due to rash and negligent driving of the offending vehicle. It is submitted that PW-1-Dr. V.K.Gupta, Casualty Medical Officer, Saraswati, Mission Hospital, Pehowa, has clearly explained the cutting in the MLR. It is specifically stated by PW-1, that efforts were afoot for an amicable resolution of the matter between the

parties. Learned counsel argues that acquittal of the accused in the criminal case cannot be indicative of any falsity in the present proceedings. It is further submitted that respondents no.1 and 2 had appeared before the learned tribunal and duly filed their written statements. In case, the owner and driver of the offending vehicle do not step in the witness box, the same cannot be held against the claimants and neither is it indicative of any kind of collusion between them. It is thus prayed that the impugned award dated 05.02.2015, be upheld.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is borne out from the record that after the occurrence of the accident on 29.07.2012, Krishan (injured) and Maya Devi (deceased) were immediately taken to Saraswati Mission Hospital, Pehowa. Maya Devi was thereafter referred to PGI Chandigarh but was admitted at Amar hospital, Bank Colony, Patiala, where she ultimately succumbed to her injuries on 16.08.2012. PW-1-Dr. V.K.Gupta, specifically deposed that he had brought the summoned record i.e., the MLR Register along with admission and discharge files of Krishan and Maya Devi. Maya Devi was referred to PGI Chandigarh after first aid on 29.07.2012. Krishan was examined by PW-1, who found multiple lacerated wound of varying size on forehead and face of Krishan with alleged history of roadside accident. Krishan was discharged from the hospital on 01.08.2012. Copy of the MLR of Krishan Kumar was proved as Ex.P-1. It is specifically admitted by PW-1 that ruqa was sent to the police station on 31.07.2012. It is explained that preparation of the MLR on 31.07.2012 and sending of the ruqa on the same day may be due to the

aspect of a compromise sought to be effected between the injured and the accused. FIR No. 88 was registered on 01.08.2012.

It is specifically mentioned in the FIR registered on the statement of Krishan Kumar that he along with his mother were travelling to pay obeisance at the temple at village Mandi Dera. While returning to their village on the motorcycle being driven by him, at about 03.30.p.m., the offending car being driven by an unknown person struck against them due to which he along with his mother fell on the ground. The car was stopped. He identified the registration no. of the Zen car to be HR-07-Q-0049. It is further stated that driver of the car fled from the spot but the complainant could identify him. Krishan was taken to the hospital along with his mother. It was prayed that driver of the car be traced out and action be taken against him.

It is specifically mentioned in the postmortem report of Maya Devi (Ex.P-16) that the cause of death of Maya Devi, are the injuries suffered by her. PW-2-Dr. K.P.Singh, Surgical Consultant, Amar Hospital, Patiala, deposed that he examined Maya Devi on 29.07.2012 at 08.50.p.m. He examined the patient Maya wife of Des Raj who was admitted in the emergency with complainant of pain in abdomen, vomiting and low blood pressure after alleged history of road side accident. She was diagnosed with haemoperitoneum and advised exploratory laparotomy. Maya Devi was operated upon the same day and about 1.5. litres of blood was drained from the abdomen. Her bleeding was controlled. Blood was detected in the left chest cavity for which intercostal tube was inserted. Patient remained in ICU on ventilator after surgery. She was shifted to the room once her condition

stabilized and she started accepting oral diet. The bedhead ticket of the patient Maya (since deceased) is 3587 and hospital identification No. 2973. While still admitted in hospital, she developed sudden pain in the chest and breathlessness on 16.08.2012 at about 2.50.p.m. She was immediately shifted to ICU with the diagnosis of acute heart attack. All attempts to resuscitate her failed and she was declared dead at 03.30.p.m. PW-2 further stated that ruqa was sent to Police Station Kaithal on 29.07.2012 at about 10.20.p.m., by Dr. Harish Tulli. Factum of the accident having taken place on 27.09.2012 cannot be doubted merely on the ground that FIR No.88 was registered on 01.08.2012 especially in view of the evidence on record.

The claimants have indeed been able to prove on the basis of preponderance of probabilities that the accident which took place on 29.07.2013 was caused due to the rash and negligent driving of the offending car by respondent-Narender Kumar and that Maya Devi succumbed to the injuries received by her in the said accident besides Krishan Kumar having received injuries as well.

It has been held by the Hon'ble Supreme Court in **Parmeshwari v. Amir Chand and others, 2011(2) RCR (Civil) 153** that in cases under this Act, it is the touchstone of preponderance of probabilities on which the case of the claimants has to be tested. There should not be insistence on proof beyond reasonable doubt as in criminal cases. Mere acquittal of the accused in the criminal proceedings without there being any specific evidence to show collusion cannot be sufficient to discard the case of the claimants. Reference in this respect can also be gainfully made to the decision of the Hon'ble Supreme Court in **Mangla Ram Vs. The Oriental**

Insurance Company, Civil Appeal Nos.2499-2500 of 2018 (arising out of SLP (Civil) Nos. 28141-42 of 2017), decided on 06.04.2018.

Damage to the motorcycle as assessed by the learned tribunal is duly proved by the evidence on record. Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in the said finding recorded by the learned tribunal. No serious arguments have been addressed in respect to the quantum of compensation awarded by learned tribunal. Deceased-Maya Devi was held to be 63 years old as per ration card. Her notional income was assessed as ₹9000/- per month. Future prospects were not afforded. Multiplier of 7 was rightly afforded.

Learned counsel for the appellant (s) is unable to deny that in case compensation under the conventional heads is to be afforded as per the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhuru Ram and others, Civil Appeal no. 9581 of 2018, arising out of SLP (Civil) No. 3192 of 2018, decided on 18.09.2018.**, there would not be much variation in the compensation awarded by the learned tribunal. There is no infirmity in the award of ₹26,500/- in favour of claimant-Krishan Kumar, for the injuries suffered by him and a sum of ₹10,000/- in favour of the claimant-Balkar Singh on account of the damage caused to the motorcycle. Therefore, in my considered opinion, there is no ground whatsoever to interfere in the impugned award dated 05.02.2015.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 05.02.2015 passed by the

F.A.O. Nos. 3093, 3241 and 3246 of 2015(O&M) 10

learned tribunal, Kurukshetra, which calls for interference by this Court at the instance of the appellant-Insurance Company. Needless to say, any observation made in this appeal would not have any effect on the appeal/appeals, if any, filed by the claimants.

All the three (03) appeals are accordingly dismissed with no order as to costs.

10.12.2018

s.khan

**[LISA GILL]
Judge**

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.