

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

FAO No.4577 of 2016 (O&M)

Date of Decision: April 30, 2018

The New India Assurance Co. Ltd.

...Appellant

Versus

Babli and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Suvir Dewan, Advocate
for the appellant – Insurance company.

Ms.Rajvinder Kaur, Advocate
for respondents No.1 to 3 – claimants.

HARINDER SINGH SIDHU, J.

The New India Assurance Company Ltd. has filed the present appeal challenging the award dated 21.4.2016 passed by the Motor Accident Claims Tribunal, Rupnagar (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 20.6.2015 near Aman Nursery on Kurali road Morinda, a vehicular accident took place involving car bearing No.PB-12H-6213 (herein for short 'the offending vehicle'), wherein, Ramesh Kumar lost his life. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

On a claim petition having been filed by the legal representatives of Ramesh Kumar, the Tribunal assessed the income of the deceased at

Rs.8000/- per month, deducted 1/3rd towards his personal expenses, applied

the multiplier of 14 (deceased aged 45 years). The loss of dependency was assessed at Rs.8,96,000/-. Amount of Rs.1,00,000/- each under the heads of 'loss of consortium' and 'loss of love and affection' was awarded. Besides, Rs.10,000/- for 'funeral expenses' and Rs.5,000/- for 'transportation' were also awarded. In all, compensation of Rs.12,11,000/- along with interest was awarded. The liability to pay the compensation was fastened upon the appellant – Insurance Company.

Challenging the Award, Ld. Counsel for the appellant – Insurer has contended that the Tribunal erred in holding that the accident was caused by the offending vehicle i.e. car bearing Reg.No.PB-12H-6213. It is argued that the offending vehicle was falsely involved in the accident only to get compensation from the appellant. It is also argued that the compensation awarded under the Conventional heads is on higher side.

On negligence and the involvement of the offending vehicle, the Tribunal framed the following issue :-

“1. *Whether on 20.6.2015, the accident took place with car bearing No.PB-12H-6213 due to rash and negligent driving of Major Singh respondent No.1, which resulted into death of Ramesh Kumar? OPP*”

Ajay Kumar, the eye-witness of the accident appeared before the Tribunal as PW2. He tendered in evidence his affidavit Ex.PW2/A, stating that on 20.6.2015, at about 8.30 pm, he was standing at the shop of his uncle Ramesh Kumar (deceased). After closing the shop, when the deceased reached near Aman Nursery on his bicycle, he was hit by a car from the back side. He specifically stated that the car was driven rashly and

negligently at a high speed. As a result of the accident, Ramesh Kumar fell down along with his bicycle and he was dragged along with the car. He with the help of others first shifted the injured to CHC Morinda and then to PGI, Chandigarh, where he succumbed to the injuries. This witness specifically asserted that the accident took place due to rash and negligent driving of the car No.PH-12H-6213.

The claimants placed on record before the Tribunal a copy of the report under Section 173 CrPC submitted by the Police to the Ilaka Magistrate challaning Major Singh – respondent No.4 for causing the accident. Copy of the order passed by the Judicial Magistrate, framing charges against respondent No.4 Major Singh was also placed on record as Ex.P2. It has also come on record that he had been facing criminal trial for causing the accident.

Further more, even the driver of the offending vehicle did not step into the witness box to controvert the allegations of rash and negligent driving. It was in the light of the above evidence that the Tribunal returned a finding that the accident was caused due to rash and negligent driving of the offending car.

It is well-settled that requirement of proof in a MACT case is not as stringent as in a criminal case.

In The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC.APP.No.750/2006, decided on 24.01.2014, while taking note of the decisions of the Hon'ble Supreme Court, it was observed by the Delhi High Court as under:-

“xxx xxx xxx *In a criminal case in order to have conviction, the matter is to be proved beyond reasonable*

doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.

21. *Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have proved negligence of the driver of the offending vehicle”*

Thus, there is no ground to interfere with the finding of the Tribunal that the accident was caused due to rash and negligent driving of the offending vehicle.

Coming to the second argument regarding awarding higher amount under the conventional heads, it is observed that in the light of the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680**, the Tribunal ought to have granted 25% increase in the income of the deceased towards future prospects. In other words, the loss of dependency will increase by 25% i.e. from 896000/- to 11,20,000/-. No doubt, the Tribunal has awarded higher amount of Rs.2,15,000/- under the conventional heads, which should have been Rs.70,000/- in view of the aforesaid decision. However, considering that even if the amount of conventional heads is reduced and 25% increase

on account of future prospects is granted, the amount payable to the claimants would be more than what has been awarded by the Tribunal, there is no justification for decreasing the amount of compensation. In view thereof there is no ground to interfere with the impugned award.

Hence, the appeal is dismissed.

April 30, 2018

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(**HARINDER SINGH SIDHU**)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No