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

FAO No.8157 of 2014 (O&M)
Date of Decision: April 04, 2018

Sri Ram General Insurance Company Ltd ---Appellant

Versus

Kamlesh and others ---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Arun Sharma, Advocate for
Mr.T.K.Joshi,Advocate
for the appellant-insurer.

Mr.Anil Kumar Gahlawat, Advocate for
Respondents No.1to 5.

Mr.S.S. Nain, Advocate for
Mr.Anshuman Dalal, Advocate for
Respondents No.6 and 7.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of FAO No.8157 of 2014 filed by Shri Ram General Insurance Company Limited as also the Cross-objections filed by the claimants – respondents.

The insurer has filed the present appeal challenging the award dated 9.12.2013 passed by the Motor Accident Claims Tribunal, Rohtak (for short 'the Tribunal'), whereas, the cross-objections have been filed by the claimants – respondents No.1 to 5 for enhancement of compensation.

Brief facts as disclosed in the claim petition are that on 28.9.2011 in the area of Village Sampla, a vehicular accident took place involving Dumper No.HR-69-6365 (herein for short 'the offending vehicle'), wherein, Shri Bhagwan and few others suffered injuries. Shri Bhagwan was first taken to PGIMS, Rohtak, from where, he was referred to Dr.Ram Manohar Lohiya Hospital, New Delhi, where, he succumbed to the injuries on 2.10.2011. 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 in Police Station Sampla.

On a claim petition having been filed by the legal representatives (widow and four children) of Shri Bhagwan, the Tribunal held that the accident was the result of rash and negligent driving of the offending vehicle by its driver. It assessed the income of the deceased at Rs.6,000/- 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.6,72,000/-. Amount of Rs.20,000/-, each, towards 'loss of love and affection, mental pain and agony', and 'funeral expenses and transportation, etc.' was also awarded. In all, compensation of Rs.7,12,000/- along with interest was awarded.

Challenging the Award, Ld. Counsel for the appellant – Insurer has contended that there was delay of three days in lodging the FIR and the finding of the Tribunal is not based on correct appreciation of evidence as it could not be proved before the Tribunal that the accident had been caused due to negligence on the part of the driver of the offending vehicle. It is also argued that the accident was a head-on-collusion of two vehicles, therefore, it was result of contributory negligence of the drivers of both the vehicles.

On the other hand, Ld. Counsel for the claimants – respondents/ cross-objectors has supported the finding of the Tribunal on the issue of negligence. It is also contended the Tribunal has not granted any increase in the income towards 'future prospects' and it also erred in deducting 1/3rd of the income for personal living expenses of the deceased, which ought to have been 1/4th only considering that there are five dependants. It is also pointed out the the amount awarded under the conventional heads is also not in accordance with the settled law in **National Insurance Company Ltd. Vs. Pranay Sethi and others** **(2017) 16 SCC 680.** It is also stated that Shri Bhagwan died after 5 days of the accident, while taking treatment in a hospital at Delhi, therefore, they are also entitled to medical expenses.

The Tribunal framed the following issue on the point of negligence:-

> "*1. Whether the accident in question occurred due to rash and negligent driving of vehicle bearing registration No.HR-69-6395 by respondent No.1? OPP"*

To prove the negligence of the offending vehicle, the claimants examined Banty, eye-witness of the occurrence as PW1. She narrated the accident and also stated that with the help of passers-by the injured was taken to PGIMS, Rohtak. Another eye-witness is Ritu (PW2), on whose version, the FIR was recorded. She is daughter of the deceased and at the time of accident, she was also travelling in the car. She stated that the offending vehicle came from the side of Sampla being driven by its driver in a rash and negligent manner and in zigzag manner and struck against the car while coming on the wrong side. Due to the impact, she, her father (deceased) and her sister sustained multiple grievous injuries. She further stated that all the injured were brought to PGIMS, Rohtak for treatment by one press-reporter namely Banty (PW1). Moreover, FIR No.372 dated 2.10.2011 under Sections 279, 337, 304-A IPC was registered against the driver of the offending vehicle in Police Station Sampla.

So far as the delay in lodging the FIR is concerned, the argument raised on behalf of the appellant – insurer cannot be accepted. It is but natural that after any road accident, the first and foremost concern of the relatives and friends of the injured is to save his life by providing him the best medical aid. In the present case, Shri Bhagwan and his two daughters were injured in the accident. They all were immediately shifted to PGIMS, Rohtak with the help of a press-reporter. Thereafter, Shri Bhagwan was referred to a hospital at Delhi.

Dealing with the issue of delay in lodging an FIR in an motor accident case, the Hon'ble Supreme Court in **Ravi versus Badrinarayan and others, 2011(4) SCC 693**, observed as under:

> ***"17.*** *It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim."*

Therefore, it is held that the delay in lodging the FIR can very well be understood as not intentional in the present case and thus cannot be said to be fatal to the case of the claimants.

The question of contributory negligence also does not arise. There is no evidence led by the appellant – insurer to that effect. Even the driver of the offending vehicle did not step into the witness box to counter the version of the eye-witnesses. In view of the above evidence, the Tribunal was right in holding that the accident was caused due to rash and negligent driving 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.

The contentions raised on behalf of the claimants – respondents/cross-objectors that the Tribunal did not award increase in income towards 'future prospects' and it also wrongly deducted 1/3rd from the income towards his personal living expenses and that the compensation under the conventional heads is also on lower side, deserve acceptance in view of the law laid down in **Pranay Sethi's case** (supra).

On 28.9.2011, the injured Shri Bhagwan was first shifted to PGIMS, Rohtak, from where, he was taken to Dr. Ram Manohar Lohiya Hospital, New Delhi. He remained under treatment there for four days and breathed his last on 02.10.2011. The claimants must have incurred expenses for his transportation as also towards his treatment in two different hospitals, which are assessed at Rs.35,000/-.

Hence, the compensation is re-assessed as under:-

Sr.No.	Heads	Calculation (In Rs.)
(i)	Monthly Income	6000/-
(ii)	25% of above (i) to be added as future prospects (deceased aged 45 yrs.)	6000+(6000x25/100) = 7,500/-

(iii)	Monthly dependency (1/4th of (ii) deducted as personal expenses of the deceased – five dependants)	7500-(7500x1/4)= 5,625/-
(iv)	Loss of dependency after multiplier of 14 is applied	5625x12x14= 9,45,000/-
(v)	Loss of Consortium (Exclusively payable to the widow of deceased)	40,000/-
(vi)	Loss of Estate	15,000/-
(vii)	Funeral Expenses	15,000/-
(viii)	Medical Expenses	35,000/-
	Total	***10,50,000/-***

The Award of the Tribunal is modified to the extent that the claimants are held entitled to compensation of Rs.10,50,000/-, that is, Rs.3,38,000/- (1050000-712000) over and above the amount awarded by the Tribunal. Interest shall be payable on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

Accordingly, the appeal is dismissed and the cross-objections are allowed in the above terms.

April 04, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No