

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

**FAO No.1337 of 2018 (O&M)
Date of decision: 09.03.2018**

IFFCO TOKIO General Insurance Company Limited

....Appellant

Versus

Sunita and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashwani Talwar, Advocate,
for the appellant.

RITU BAHRI J. (Oral)

CM No.5039-CII of 2018

For the reasons mentioned in the application, same is allowed and delay of 08 days in re-filing of the appeal is condoned.

FAO No.1337 of 2018

The Oriental Insurance Company Limited-appellant has come up in appeal against the award dated 11.10.2017 passed by the Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.14,25,500/- has been awarded in favour of claimants-respondent Nos. 1 to 5 on account of death of Bittu in a motor vehicular accident which took place on 27/28.02.2016. Respondent No. 1 is widow, respondent Nos.2 & 3 are children and respondent Nos.4 & 5 are parents of deceased Bittu.

Brief facts of the case are that in the intervening night of

Omi, Baldev and Gandhi, after loading *paralli* (paddy straw) in a trolley, was returning on foot towards his village Data Singh Wala. When they reached in the area of village Ujhana near Fauji Hotel, a white coloured car being driven by Bhagat Singh-respondent No.6 (respondent No.6 in claim petition) in a rash and negligent manner, came from behind and struck against Bittu, as a result of which, he fell down on the road and received grievous injuries on his head and legs. After the accident, Bhagat Singh fled away from the spot along with his vehicle. Bajinder Singh and Sukhbir Singh witnessed the accident and tried to chase the offending car up to a long distance. They also noted down the registration number of the offending car as HR-05-Z-4763. After some time, Bittu succumbed to the injuries. With regard to the accident, FIR No.20 dated 28.02.2016, under Sections 279/337/304-A IPC was registered at Police Station, Garhi on the statement of Kaku. Consequently, the claimants (respondent Nos. 1 to 5 herein) filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question had taken place due to rash and negligent driving of offending vehicle by its driver-respondent No.1 (respondent No.6 herein) and thus, returned the finding on issue no.1 in favour of the claimants-respondent Nos. 1 to 5. This finding is given on the basis of testimony of Kaku (PW-2), who was eye witness of the accident. Apart from this, claimants had also proved on record copy of FIR Ex.P1, report under Section 173 Cr.P.C. Ex.P3, certified copy of charge sheet Ex.P4, copy of mechanical examination report Ex.P5 and certified copies of statements made by Baljinder and Sukhbir under Section 161 Cr.P.C. as Ex.P8 and Ex.P9.

In the absence of any documentary evidence, income of deceased was assessed as Rs.8500/- per month as that of unskilled labourer and the compensation was assessed as under:-

Sr. No.	Heads	Calculation
(i)	Income	Rs.8500/- per month.
(ii)	Income after applying 1/4 th deducted	Rs.6375/-
(iii)	Compensation after multiplier of 17 is applied	Rs.6375 x 12 x 17 = Rs.13,00,500/-
(iv)	Loss of consortium	Rs.1,00,000/-
(v)	Funeral & transportation expenses	Rs.25,000/-
(vi)	Total	Rs.14,25,500/-

Ultimately, the claim petition was accepted and a sum of Rs.14,25,500/- was awarded as compensation in favour of the claimants. Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal.

I have heard learned counsel for the appellant and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. In the present case, after the accident, FIR Ex.P1 was registered on the same day itself i.e. 28.02.2016. Initially, the FIR was got registered against unknown vehicle. After conclusion of the investigation, challan was presented against the driver of offending vehicle, who was facing trial. Even Bajinder Singh, eye witness appeared in the witness box as PW-3 and corroborated the version given in the FIR. He was not an interested witness. A perusal

of the challan shows that statements of Bajinder Singh and Sukhbir Singh were recorded under Section 161 Cr.P.C., whereby they supported the version given in the FIR. Keeping in view the fact that after registration of FIR Ex.P1, challan was presented against Bhagat Singh (driver of offending vehicle) and he was facing a criminal trial, denial of the accident by RW-1 and RW-2 would not be sufficient to discard the testimony of the eye witnesses. Accordingly, after going through the impugned award, no illegality, much less perversity has been found therein warranting interference by this Court. The Tribunal has assessed the compensation after appreciating evidence in the right perspective.

Resultantly, the present appeal is dismissed being devoid of any merit.

(RITU BAHRI)
JUDGE

09.03.2018
ajp

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