

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

FAO No.1403 of 2018 (O&M)

Date of Decision: August 09, 2018

Oriental Insurance Company Ltd ---Appellant

Versus

Rajo and others ---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.R.C. Gupta, Advocate for
the appellant-insurer.

HARINDER SINGH SIDHU, J.

For the reasons stated in CM-5398-CII-2018, delay of 8 days in filing the appeal is condoned.

The insurer has filed the present appeal challenging the award dated 21.10.20017 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 15.7.2016 in the area of Village Aheru Khurd, a vehicular accident took place involving Car No.CH-03X-4720 (herein for short 'the offending vehicle'), wherein, Ramesh Kumar @ Harmesh 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 parents, widow and two minor children of Ramesh Kumar, the Tribunal assessed the income of the deceased at Rs.7500/- per month, deducted 1/3rd towards his personal

expenses, applied the multiplier of 16 (deceased aged 32 years). The loss of

dependency was assessed at Rs.9,60,000/- (5000x12x16). Amount of Rs.1,00,000/- towards 'loss of consortium' and Rs.25,000/- as 'funeral expenses' were also awarded. In all, compensation of Rs.10,85,000/- along with interest was awarded.

Challenging the Award, Ld. Counsel for the appellant – Insurer has argued that the Tribunal erred in deciding the issue of negligence as the respondents – claimants have failed to prove the involvement of the offending vehicle in the accident. It is also submitted that the amount awarded under the conventional heads is on higher side.

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

“1. Whether Ramesh Kumar @ Harmesh Kumar died due to the injuries sustained in road accident on 15.7.2016 caused due to rash and negligent driving of Alto car No.CH-03X-4720 by respondent No.1? OPP”

To prove the negligence of the offending vehicle, the claimants examined Amar Singh, eye-witness of the occurrence as CW2. He tendered into evidence his duly sworn affidavit Ex.CW2/A along with copy of FIR Ex.C2. In the affidavit, he narrated the entire occurrence stating that the driver of the offending vehicle was responsible for causing the accident due to rash and negligent driving of the vehicle. He stated that on the fateful day, the deceased along with his father Raj Kumar was returning after attending Jagrata (*religious prayers during night time*) from village Saunta on motorcycle, being driven at a moderate speed. At about 5.00 am, when they crossed bridge of village Aheru Khurd, the offending car No.CH-03X-

4720 came from opposite direction, being driven by Sanjeev Kumar – respondent No.6 in a rash and negligent manner and struck against the motorcycle of the deceased. This witness was cross-examined at length, wherein, he stated that his fields are near the place of occurrence and at the time of the accident, he had gone there. He also stated that the distance between the place of occurrence and his fields was only one acre. He also categorically stated that he had also made the statement before the Police on 17.7.2016 when the police came at the spot for investigating the case. CW2 further testified that he had seen the driver of the offending car and noted its registration number.

FIR No.76 dated 15.7.2016 (Ex.C2) under Sections 279, 304A of the Indian Penal Code was also registered in Police Station Julkan, District Patiala regarding the accident. The police got conducted the postmortem examination on the body of the deceased and its report Ex.C1 was also produced on the case file of the Tribunal.

Ld. Counsel for the appellant argued that the FIR Ex C 2 had been lodged by the father of the deceased against an unknown vehicle. The name of the eye witness Amar Singh was not mentioned in the FIR. And that no challan had been presented against the driver. On the basis thereof he argued that the involvement of the vehicle is not proved.

In my view none of the above submissions is sufficient to lead to a different conclusion than that recorded by the Tribunal. No doubt in the FIR recorded at the instance of the father of the deceased the vehicle is mentioned as unknown. But the testimony of Amar Singh, eyewitness to the accident, as elaborately discussed by the Tribunal leaves no manner of

doubt about the involvement of the offending vehicle. Further though RW 1 ASI Baljinder Singh, the investigating officer in the FIR, had stated that challan had not been presented against the driver, but he admitted in cross examination that the challan was ready to be presented against the driver of the offending vehicle. He also stated that the accused driver had not moved any application before the authorities that he had been falsely implicated in the case.

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.

Regarding the second contention of 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 40% increase in the income of the deceased towards future prospects. In other words, the loss of dependency will increase by 40% i.e. from 960000/- to 13,44,000/-. This amount of dependency would require further enhancement, as there were five dependants, and accordingly, the deduction towards personal living expenses of the deceased should have been only 1/4th instead of 1/3rd, as done by the Tribunal. No doubt, the Tribunal has awarded higher amount of Rs.1,25,000/- 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 40% increase on account of future prospects is granted and deduction of 1/4 instead of 1/3 is made on account of personal expenses, 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.

It is made clear that this order has been passed on an appeal

filed by the Insurance Company without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any ground that may be available to them.

August 09, 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No