

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

FAO No. 1548 of 2018 (O&M)

Date of decision : September 19, 2018

Iffko Tokio General Insurance Company LimitedAppellant

Versus

Dhanpati and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

LISA GILL, J.

Present appeal has been filed by Iffko Tokio General Insurance Company Limited impugning award dated 22.12.2017 by the learned Motor Accident Claims Tribunal, Panipat (hereinafter referred to as the 'Tribunal').

Respondents No. 1 and 2 filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Sandeep on 06.11.2015 in a motor vehicle accident caused due to driving of the offending vehicle truck bearing registration No. UP-12T-6731 by respondent No.3 in a rash and negligent manner.

Brief facts necessary for adjudication of the case are that on 06.11.2015 Sandeep was returning from N.C. College to his village Palri on a motorcycle bearing No. HR-06Z-5460. When he reached near village Naultha, truck bearing registration No. UP-12T-6731 driven by respondent No. 1 at a high speed in rash and negligent manner hit the motorcycle from behind. Resultant thereto, Sandeep sustained multiple grievous injuries and succumbed to his injuries at the spot. Respondent No. 1 fled away from the

spot. FIR No. 244 dated 06.11.2015 under Sections 279, 304A, 427 IPC was registered at Police Station Israna.

Learned Tribunal while holding that the deceased was 21 years old, assessed his income to be ₹7600/- per month. Multiplier of 18 was applied. 50% deduction was effected towards personal expenses. Total dependency was calculated at ₹11,49,120/-. Additionally, a sum of ₹15,000/- on account of loss of estate was awarded besides a sum of ₹15,000/- on account of funeral expenses. Learned Tribunal awarded a sum of ₹11,79,120/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till date of actual realisation of the award. Quantum of compensation awarded to the claimants has not been challenged in this appeal.

Learned counsel for the appellants vehemently argues that the present is a case of hit and run. In an unjustified manner, the offending truck has been introduced at a later stage by the claimants in connivance with the police officials. Learned counsel refers to FIR (Ex. P10), which was registered on the statement of Vikrant - PW6. PW6 - Vikrant stated that on 06.11.2015 his cousin brother Sandeep was returning to village from N.C. College, Israna on his motorcycle bearing registration No. HR-06Z-5460. PW6 Vikrant was travelling behind deceased on his own motorcycle. When they reached near the village Naultha, a canter (registration number of which was not mentioned) driven in a rash and negligent manner hit the motorcycle driven by the deceased. Sandeep received injuries and was admitted to the hospital. Post Mortem Report is Ex.P8.

It is contended by learned counsel, that the registration number of the offending truck was given by Vikrant after a number of days on

28.11.2015 in a supplementary statement recorded before the police. It is further argued that PW6 Vikrant stated the offending vehicle to be a canter at the time of registration of FIR on 06.11.2015 but in his supplementary statement recorded on 28.11.2015, he averred that due to his perplexed state of mind, he stated the vehicle to be canter instead of a truck and the number of the truck could not be revealed at that time. It is on this account it is argued that the offending vehicle was not involved in the accident, therefore, insurance company has been wrongly held liable.

I have heard learned counsel for the appellant and have gone through the record with his able assistance.

There is no dispute that FIR No. 244 dated 06.11.2015 was registered at the instance of PW6 – Vikrant on 06.11.2015 itself i.e. the date on which the accident in question took place. Sandeep died on the spot due to the injuries received in the accident. Post Mortem Report (Ex.P8) is on record. After investigation, final report under Section 173 Cr.P.C. (Ex.P11) was presented and the driver of the offending vehicle was duly proceeded against. PW6 Vikrant while testifying before the learned Tribunal has specifically deposed regarding the accident taking place due to the rash and negligent driving of the offending truck.

PW5 - Mandeep the elder brother of the deceased Sandeep has also testified regarding the accident in question. Both the said witnesses have clearly deposed that the accident in question took place due to rash and negligent driving of the offending truck bearing registration No. UP-12T-6731. PW5 and PW6 have also stated that respondents No. 1 and 2 in the claim petition visited them for a compromise.

Perusal of the record, specifically Ex.R3 i.e. certificate of

registration of the offending vehicle reveals that the truck is an open bodied Tata 2518 Multi-axle Goods vehicle. As per the cover note (Ex.R4), the vehicle insured is Tata 2518. There is indeed no dispute regarding the vehicle in question. Judicial notice can be taken of the fact that the shape and body of the truck in question can easily lead a common layman to refer to the same as a canter as well. Merely on this ground that PW6 Vikrant stated that the vehicle was a canter at the time of registration of the FIR is not sufficient to prove that the offending vehicle has been introduced at a later stage. It is a matter of record that the matter was duly investigated into by the police authorities. Final report under Section 173 Cr.P.C. was presented and the driver of the offending vehicle was duly proceeded against. It is trite that in proceedings under the Act, claimants are required to prove their case on preponderance of probabilities, which has been successfully achieved in the present case.

Learned Tribunal has, thus, rightly held that the claimants have successfully proved the accident to have occurred due to the rash and negligent driving of the offending vehicle by the respondent – driver. There is indeed no evidence on record to indicate any kind of collusion between the claimants and the police officials or any other, as has been averred. Perusal of the testimonies of PW5 and PW6 reveal that the same are creditworthy. Nothing fruitful to the insurance company came forth despite lengthy cross examination of the said witnesses. Respondent No. 1 – driver of the offending truck did not step in the witness box to deny the rash and negligent driving.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any

illegality, infirmity or perversity in the impugned award dated 22.12.2017 passed by the learned Motor Accident Claims Tribunal, Panipat which calls for any interference by this Court.

Accordingly, the present appeal is hereby dismissed with no order as to costs.

September 19, 2018
rts

(Lisa Gill)
Judge

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