

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. FAO No. 1569 of 2018 (O&M)
Date of Decision : 23.03.2018**

Oriental Insurance Company Ltd.Appellant

Versus

Om Dutt and othersRespondents

2. FAO No. 1570 of 2018 (O&M)

Oriental Insurance Company Ltd.Appellant

Versus

Ishwar Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

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

Surinder Gupta, J.

These are the appeals filed by Oriental Insurance Company Ltd. against award dated 19.01.2018 passed by Motor Accident Claims Tribunal, Panipat (later referred to as 'the Tribunal') awarding sum of ₹11,79,120/- as compensation to claimants in each case for death of Manoj Kumar and Sandeep (later referred to as 'the deceased'), in a motor vehicle accident on 07.09.2016 with Canter bearing registration no. HR-69-9382 (later referred to as 'the offending vehicle').

2. Learned counsel for appellant-Insurance Company has assailed the award passed by the Tribunal on two grounds. Firstly, that the Tribunal has committed error while holding that the accident had taken place with the offending vehicle; and secondly, that the Tribunal has applied the multiplier while computing amount of compensation towards loss of dependency as per age of the deceased instead of age of the claimants.

As per case of claimants, deceased Manoj Kumar and Sandeep

were returning to their village on motorcycle, which was being driven by deceased Sandeep. When they reached at Mannat Dhaba, G.T.Road, Samalkha, District Panipat, the offending vehicle came from the side of Samalkha and hit their motorcycle, resulting in serious injuries to both. FIR No. 548 dated 07.09.2016 was registered at Police Station Samalkha, District Panipat regarding this accident. On appraisal of evidence, the Tribunal has observed in paras 13 and 14 of the award, as follows:-

“13. The aforesaid oral as well as documentary evidence adduced by the claimants has gone completely un rebutted on record. A perusal of the copy of the final report Ex. P2 shows that the case regarding the accident in question was registered on the written complaint of PW3 Jitender which was submitted to the police in PGI, Khanpur. The version put forth in the FIR, which has been reflected in the final report Ex. P2, regarding the factum and manner of accident is completely in consonance with the statement of PW3 Jitender. Even registration number of the offending vehicle was also mentioned in the FIR. Under these facts and circumstances of the case, there is no reason to disbelieve the un rebutted testimony of PW-3 Jitender regarding the factum and manner of accident.

14. Moreover, a perusal of copy of the final report Ex. P2 and copy of order dated 18.09.2017 Ex. P4 further reveals that on completion of investigation of the case registered in respect of the accident in question, respondent no. 1 was found responsible for causing the accident in question by his rash and negligent driving of the vehicle no. HR-69-9382 and accordingly, final report Ex. P2 was submitted

*against him in the Court of learned Area Magistrate and copy of challan has been supplied to him by the learned Magistrate, free of costs as envisaged under Section 207 Cr.P.C. Further, respondent no. 1, who was driving the offending vehicle at the time of accident, was an equally important witness but he could not dare to step into the witness box to rebut the rash and negligent driving attributed to him. Had the accident not taken place due to rash and negligent driving of vehicle no. HR-69-9382 by respondent no. 1, then he must have approached the higher police authorities for cancellation of the case alleging false implication, but there is nothing on record to show that he took any step in that direction. This conduct of respondent no. 1 of remaining silent goes against him. Even the respondents did not produce respondent no. 1, the driver of the offending vehicle, in the witness box to deny the rash and negligent driving of the offending vehicle attributed to him. In these circumstances, an adverse inference is liable to be drawn against the respondents that if they had produced respondent no. 1 in the witness box, he could not withstand the test of cross-examination. In this regard, reference may be made to the law laid down in **Raju and others Vs. Sukhwinder Singh and others, 2006 RCR (Civil) (P&H) 82**, wherein it was observed that if the driver of the offending vehicle does not come forward to deny his negligence, then an adverse inference is to be drawn against him and he is presumed to be negligent.”*

promptness. The number of offending vehicle find mentioned in the FIR and police after completion of investigation has also presented challan against driver of the offending vehicle. All these facts and circumstances depict that the accident had taken place with the offending vehicle and the testimony of eye-witness proves that it was caused due to rash and negligent driving of the offending vehicle by its driver. Evidence produced by claimants on this point is un rebutted, as such, submission of learned counsel for the appellant that the offending vehicle was not involved in the accident, is without any merit and is discarded.

5. Hon'ble Constitutional Bench of Apex Court in case of **National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**, has categorically observed that while computing amount of compensation on account of loss of dependency, multiplier is to be applied as per age of the deceased. The Tribunal has followed the law as settled by Hon'ble Apex Court. Learned counsel for appellant could not point out or refer to any other citation where contrary view has been taken.

6. In view of above discussion, I find no merit in both the submissions of learned counsel for appellant. Both the appeals have no merit and the same are dismissed.

March 23, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No