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

**FAO No.1894 of 2018 (O&M)**
Date of Decision: August 17, 2018

Reliance General Insurance Company Ltd. ---Appellant

Versus

Mamta and others ---Respondents

**Coram: Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.Sanjeev Kodan, Advocate for the appellant-insurer.

***

**HARINDER SINGH SIDHU, J.**

Reliance General Insurance Company Limited, has filed the present appeal challenging the award dated 23.2.2018 passed by the Motor Accident Claims Tribunal, Patiala (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 8.2.2017 Mohinder Singh and Baljit Singh @ Baljit Gir were going on Motorcycle No.PB-23J-7647 for the sale of iron dust at Ajanali. The bike was driven by Mohinder Singh in a rash and negligent manner. Baljit Singh was the pillion rider. At about 9.00 P.M., when they reached Mohalla Ajanli, then suddenly a stray cow appeared in front of the bike. As Mohinder Singh was driving at a high speed, he could not control the motorcycle and Baljit Singh after bouncing from the motorcycle, struck against a pole on one side of the road, while Mohinder Singh fell on the other side of the road. Baljit Singh received multiple injuries on his head. He was taken to Civil Hospital, Mandi Gobindgarh from where he was referred to Civil Hospital, Fatehgarh

Sahib and then to Rajindra Hospital, Patiala, where he died during treatment.

On a claim petition having been filed by the legal representatives of the deceased Baljit Singh, the Tribunal assessed the income of the deceased at Rs.7500/- as per the minimum wages of an unskilled labourer, awarded addition of 40% towards future prospects, deducted 1/4th towards his personal expenses, applied the multiplier of 16 (deceased aged 35 years). The loss of dependency was assessed at Rs.15,12,000/-. Amount of Rs.40,000/- towards 'loss of consortium', Rs.15,000/- each for 'funeral expenses' and 'loss of estate' were also awarded. In all, compensation of Rs.15,82,000/- along with interest was awarded.

Challenging the Award, the sole argument of Ld. Counsel for the appellant – Insurer is that the claimants had failed to prove that the accident was the result of the rash and negligent driving by respondent No.6 – Mohinder Singh, and, thus, the appellant – insurer is not liable to pay the compensation. It is stated that in this case no FIR was registered and it was not the case of the claimants that the accident had occurred due to the negligence of the driver of the offending vehicle.

I have heard Ld. Counsel for the appellant but do not find any merit in the submission.

The Trial Court framed the following issue qua the cause of accident :

> "*Whether Baljit Singh @ Baljit Gir had died in a roadside accident, due to rash and negligent driving of offending vehicle bearing No.PB-23-J-7647 being driven by the respondent No.1? OPP*"

Mithu Gir, while appearing as CW1 before the Tribunal deposed that the accident occurred due to rash and negligent driving by respondent No.6 Mohinder Singh. He stated that the deceased was the pillion rider on the motorcycle driven by respondent No.6. In para 2 of his deposition before the Tribunal (Annexure A-1) he stated:

> "2. *I state on oath that on 08.08.2017 deceased Baljit Singh @ Baljit Gir and Mohinder Singh were going on the motor cycle bearing its registration No.PB-23-J-7647 for sale of iron dust at Ajanali, which was being driven by Mohinder Singh respondent no.1 and Baljit Singh @ Baljit Gir was the pillion rider of the motor cycle.* ***The motor cycle was being driven in rash and negligent manner by respondent no.1.*** *At about 9.00 PM when they reached near Mohalla Ajanali then suddenly one stray cow has appeared in front of the motor cycle.* ***That as a motor cycle was driven by respondent no.1 at a high speed so he could not control the motor cycle*** *& on account of sudden braking, as a result of which the pillion rider i.e. deceased Baljit Singh @ Baljit Gir after bouncing from the motor cycle got struck with one pole on the side of the road and respondent No.1 fell down other side of the road. Due to this deceased Baljit Singh @ Baljit Gir received multiple, simple and grievous injuries on his head while respondent no.1 received minor injuries and deceased Baljit Singh @ Baljit Gir was taken to Civil Hospital Mandi Gobindgar where doctor concerned deceased Baljit Singh @ Baljit Gir was referred to Civil Hospital, Fatehgarh Sahib thereafter to Rajendra Hospital, Patiala but deceased Baljit Singh @ Baljit Gir could not bear the injuries suffered by him in this accident and died during treatment.* ***The motor cycle was driven in rash and negligent manner at the time of accident and the accident would have been avoided if the respondent No.1 driving the same at moderate speed. The accident has taken place on***

***account of sole rash and negligent driving of the motor cycle no.Pb-23-J-7647 by the respondent no.1.*"**

Clearly he has held Mohinder Singh – respondent No.6 (respondent No.1 before the Tribunal) solely responsible for causing the accident. He has in unequivocal terms stated that the offending vehicle was driven in a rash and negligent manner at the time of the accident and it could be avoided had Mohinder Singh driven it at moderate speed.

The Ld. Tribunal has rightly discarded the argument of the Insurance Company that since two of the Claimants i.e., Mamta, wife of the deceased Baljit Gir and Mithu Gir, his father, had in their statements to the police not alleged negligence on the part of Mohinder Singh, the case of negligence was not proved by observing that those statements were not made on oath and could not be relied on in preference to the deposition before the Tribunal. The case has to be decided on the basis of the statement before the Court and not before the Police. In statement before the Court, the rashness and negligence in causing the accident has been attributed to the driver of the offending motorcycle.

The requirement of proof in a MACT case is not so stringent as in a criminal case. The Hon'ble Supreme Court in **Kusum Lata and others vs. Satbir and others, 2011(2) RCR(Civil) 379 (SC)**, while distinguishing the criminal trial from proceedings before the Tribunal has observed that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. It has been stressed that the Court must keep this distinction in mind. Strict proof of an accident caused by a particular vehicle in a particular manner may not be possible by the claimants. The claimants are merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. Thus, the finding of the Tribunal on issue of negligence is upheld.

No other argument was raised.

Appeal 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 17, 2018
*gian*

**(HARINDER SINGH SIDHU)**
**JUDGE**

| | |
|---|---|
| Whether Speaking / Reasoned | Yes |
| Whether Reportable | Yes / No |