

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1493 of 2019

Date of decision: 23.4.2019

National Insurance Company Limited

.. Appellant

v.

Manju Malik and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Suri, Advocate for the appellant.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 14.9.2018 passed by the Motor Accident Claims Tribunal, Panipat (for short, 'the Tribunal') has been assailed by the insurer of Canter bearing registration No. HR-67A-0669 (hereinafter referred to as 'the offending vehicle').

The only grievance raised in the present appeal at the time of arguments is that the claimants failed to prove that the accident was result of rash and negligent driving of the offending vehicle and hence not entitled to compensation.

The facts emanating from the record are that on 26.11.2015, Yatin Malik (deceased) alongwith his mother Manju Malik was going from Panipat to Delhi. They were travelling in Scorpio bearing registration No. HR-06AF-0138 (hereinafter referred to as 'Scorpio'). The Scorpio was being driven by Yatin Malik. When they reached in front of Sukhdev Dhaba, G.T. Road and Yatin Malik was trying to cross the offending vehicle, which was going ahead of him, the driver of the offending vehicle suddenly turned towards right side without giving any indication. As a

result, the Scorpio struck the back side of the offending vehicle. Yatin Malik sustained injuries and ultimately succumbed to the injuries. FIR No. 507 dated 28.11.2015 was registered at Police Station, Murthal on the statement of Manju Malik.

The Tribunal framed the following issues:

- “1. Whether Yatin had died in an accident caused on 26.11.2015 with vehicle bearing No. HR-67A-0669 due to rash and negligent driving of respondent No. 1? OPP
2. If issue no.1 is proved, whether the claimants are entitled to any claim, if so, to what amount and from whom ? OPP
3. Whether the insured has violated the terms and conditions of insurance policy, if so, its effect ? OPR3
4. Relief.”

The Tribunal considering the facts awarded a sum of ₹29,66,610/- along with interest @ 7.5% per annum. The owner, driver and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

With regard to issue No. 1, the Tribunal came to the conclusion that the accident was result of rash and negligent driving of the offending vehicle. The appellant is aggrieved of the findings recorded with regard to issue No. 1.

Heard learned counsel for the appellant and perused the record.

Learned counsel for the appellant argues that as the Scorpio

struck from behind, the driver of the Scorpio was not maintaining the safe distance, hence the accident was result of rash and negligent driving of the deceased. To buttress his argument, he relies upon the deposition of RW1-Jitender (driver of the offending vehicle), wherein he stated that the accident was result of high speed and rash and negligent driving of the deceased. He was trying to overtake the offending vehicle from wrong side and in the process, he struck against the back portion of the offending vehicle.

The contention raised by learned counsel for the appellant lacks merit. The law is well settled that onus under Section 166 of the Motor Vehicles Act, 1988 to prove the involvement of the offending vehicle and that the accident was result of rash and negligent driving of the offending vehicle is on the claimants. Further there is no challenge to the proposition that in motor accident cases the onus is not as heavy as in the criminal proceedings. The issue is to be decided on the touchstone of preponderance of probabilities. The Supreme Court in **Bimla Devi and others v. Himachal Road Transport Corporation and others**, 2009 (3) RCR (Civil) 805: 2009 (4) RAJ 408: 2009 (2) AICJ 167: (2009) 13 SCC 530 held as under:

“In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”

From the perusal of the award, it is forthcoming that Manju Malik was the eye-witness to the accident. Even in her cross-examination, she stated that she was travelling with her son in the Scorpio at the time of accident. On her statement, the FIR was registered. Manju Malik in her deposition has clearly stated that the accident was a result of rash and negligent driving of the offending vehicle. There is no deviation in her statement made at the time of registration of the FIR and thereafter while deposing before the Court. It has been consistently said that while the deceased was trying to cross the offending vehicle, the driver of the offending vehicle swayed the vehicle towards right side without any signal. She withstood the cross examination also. Her evidence has not been rebutted by any substantial evidence.

Reliance on the statement of RW1-Jitender (driver of the offending vehicle) does not enhance the case of the appellant as apart from being an interested witness, he is also facing criminal proceedings. In such circumstances, it cannot be expected that he would admit his rash and negligent driving as it ceases his fate in the criminal proceedings.

No shadow can be cast upon the findings recorded by the Tribunal on the rash and negligent driving of the offending vehicle.

The appeal is dismissed. Since the appeal has been decided on merits itself, the question of limitation is left open.

(AVNEESH JHINGAN)
JUDGE

23.4.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No