

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

**FAO No.2507 of 2019**

Decided on:03.05.2019

The Oriental Insurance Company Limited

.....Appellant

versus

Rajiya and others

....Respondents

**CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN**

Present: Mr.Raj Kumar Bashamboo, Advocate,  
for the appellant.

**DR.RAVI RANJAN, J. (Oral Judgment)**

**CM-8093-CII-2019**

This application has been filed for condoning the delay of 45 days in filing this application.

Having regard to the facts and circumstances mentioned in the application, the same is allowed and the delay of 45 days in filing this appeal is hereby condoned.

**FAO-2507-2019**

1. This appeal has been preferred by the respondent-Oriental Insurance Company Limited assailing the Judgment and Award dated 31.10.2018 passed in MACP/306/2017 by which the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter to be referred to as the 'Act') has been allowed and a compensation of a sum of Rs.15,32,500/- has been awarded alongwith interest at the rate of 9% per annum to be calculated from the date of filing of the petition till realisation of the awarded amount. The respondents no.1 and 2, i.e, the owner-cum-

driver of alleged offending vehicle as well as the Oriental Insurance Company have been held jointly and severally responsible for such payment. Since the vehicle has been found to be insured with the respondent no.2/appellant, it has been held under obligation to indemnify the owner.

2. Briefly stating, the case of the claimants as set up in the claim petition is that one Mustak Kamal (since deceased), who was coming to Dharuhera from his village, met with an accident with the vehicle, i.e., Bolero car bearing No.HR-28D-5800, near village Budhla, District Rewari on 27.02.2017 and he died at the spot. FIR was lodged on 28.02.2017 for the offence punishable under Section 279 and 304-A of Indian Penal Code, at Police Station Kasola and the information was given by the brother of the deceased, viz., Tahir Khan.

In the claim petition it has been stated that the deceased was 45 years of age at the time of accident and was working as a Deed Writer besides being agriculturist and was earning Rs.25,000/- per month and all the claimants were dependent upon him for their livelihood. The applicants claimed an amount of Rs.50 Lakhs as compensation.

3. The respondents appeared upon notice and resisted the claim by filing their separate written statements.

The respondent no.1, i.e., the owner-cum-driver of the offending vehicle, took a stand that actually no accident had taken place at the given date and the petition has been filed simply for extorting money from him. However, in alternative he pleaded that if the Tribunal comes to the conclusion that the accident had taken place due to negligence of the offending vehicle, since it was duly insured with respondent no.2-Insurance Company, thus, Insurance Company would be duty bound to indemnify him.

The respondent no.2-the Oriental Insurance Company, took objection in its written statement that the driver of the offending vehicle was not holding a valid and effective driving licence to drive it at the time of alleged accident and the vehicle was being driven in violation of terms and conditions of insurance policy, thus, it has been pleaded that respondent no.2 is not liable to indemnify the owner/driver.

4. The Tribunal on the basis of rival pleadings framed following issues:

1. Whether Mustafa Kamal died in a vehicular accident that took place due to rash and negligent driving of offending vehicle Bolero being registration No.HR-28D-5800 by respondent no.1, as alleged in the petition?OPP
2. If issue no.1 is prove, whether the petitioners are entitled to compensation?If so to what amount?OPP
3. Whether respondent no.1 was not holding a valid and effective driving licence on the date of accident? If so its effect?OPR
4. Relief.

5. In order to to support their stand, the claim petitioner no.1 Rajiya examined herself as PW1, one Abid Hussain as PW2, brother of deceased, v.i.z., Tahir Khan as PW3 and Registry Clerk as PW4.

After filing written statement, the respondent no.1, i.e., the owner-cum-driver disappeared from the scene and stopped attending the proceedings, thus, the Tribunal proceeded *ex parte* against him.

Respondent no.2 closed its evidence after tendering some documents.

6. The Tribunal, after appreciation of materials on record, held that the accident was the result of negligent driving by the offending vehicle due to which Mustak Kamal died and as such, decided issue no.1 in favour of claim petitioners. Issue no.2 was also decided in favour of the claim petitioners holding that the deceased was 45 years of age and, as such, in

view of the decision rendered by the Hon'ble Apex Court in “**Sarla Verma vs. Delhi Transport Corporation**” 2009(3) RCR (Civil) 277, the Tribunal chose a multiplier of 13 and added 25% of the income towards future prospect. Upon calculation, it held that the claim petitioners would be entitled to receive a compensation amount of Rs.15,32,500/- alongwith interest at the rate of 9% per annum to be calculated from the date of filing of petition till the date of realisation of the amount. It has further been held that Rs.8 Lakhs shall be paid to the claimant petitioner no.1-Rajiya, the widow of the deceased and remaining Rs.7,32,500/- shall be shared by the petitioners no.2 to 4 equally.

7. In the aforementioned factual background, I have heard learned counsel for the appellant-Insurance Company.

The main thrust of the appellant-Insurance Company on the issue is, since negligence of the offending vehicle could not be proved, therefore, the claimants could not have been allowed compensation amount. It is contended that there is delay of 2 days in lodgement of FIR and the FIR shows that the informant was not an eyewitness. So far the eyewitness PW2 is concerned, it does not appear that he was actually an eyewitness and, as in such a case he could have stood as informant or at least the police could have recorded his statement when he was present at the place of accident as, according to his testimony, police came after about 1 and ½ hours of the accident at the place of occurrence in his presence. It is contended that the claimants would have to be put at the strict proof of the factum that there was negligence on the part of offending vehicle. They have miserably failed to discharge their onus.

In support of his averments, learned counsel for the appellant

has placed reliance upon a decision of a single Bench of this Court rendered in “**National Insurance Company Limited vs. Babloo and another**” **2015(2) PLR 850**, holding that since claimants did not examine the author of FIR or any other eyewitness it would be difficult to hold that the offending vehicle was driven in negligent manner as the claimants would be under obligation to establish that the accident has been taken place due to rash and negligent driving of the offending vehicle. The claimant cannot be absolved his obligation to prove negligence on the part of the driver when he has approached the Tribunal under Section 166 and not under Section 163-A of the Act in which negligence would be required to be proved.

This limb of argument on behalf of the appellant-Insurance Company *prima facie* appears to be attractive but on deeper scrutiny this Court does not find it tenable. There is no quarrel with the aforesaid decision of learned Single Judge that the claimant has to prove negligence but the question would be whether he/she can be put to such strict proof of that as would be required in a criminal trial, i.e., to prove it beyond all reasonable doubt? There is a long line of decisions of Hon'ble Supreme Court answering this issue. One of the decision is “**Bimla Devi vs. Himachal Road Transport Corporation**” **2009 (3) SCC 530**. In several other decisions including one rendered by three Judges Bench of the Hon'ble Apex Court in “**Mangla Rama vs. Oriental Insurance Company Ltd.**” **(2018) 5 SCC 656**. In a recent Judgment being “**Sunita and others vs. Rajasthan State Road Transport Corporation and another**” **AIR 2019 SC 994** (by the two Judges Bench), the Hon'ble Supreme Court has held that while deciding the issue of negligence, the Tribunal or Court should not adopt a hyper-technical approach as such type of cases are being

decided under a beneficiary legislation and the object of the Act being benevolent one, the claimants are not required to prove their cases beyond all reasonable doubt as is being done in criminal trial rather they have merely to establish their case on the touchstone of preponderance of probabilities.

In “**Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another**” (2013) 10 SCC 646, the Apex Court has gone to the extent in a case in which the evidence of claimant's eyewitness was discarded on the ground that the respondent in that case was acquitted in the criminal trial concerning the accident, to hold that it cannot be overlooked that upon investigation of case registered against respondents, *prima facie* materials showing negligence were found to put him on trial. The Court restated the settled principle that the evidence of the claimants ought to be examined by the Tribunal on the touchstone of preponderance of probability and certainly the standard of proof beyond reasonable doubt could not have been applied.

8. Coming to the case in hand, of course, there is delay of about two days in lodgement of FIR but considering the nature of the case in which a person has died, such delay would not be of much help to the respondents.

9. Another ground has been taken that in the FIR, the name of the driver and registration number of the vehicle was not disclosed. However, one should not forget that the Tribunal has taken a notice that after completion of investigation, the police has already submitted its final report under Section 173 Cr.P.C. indicating the driver of the offending vehicle guilty of negligence and he was facing trial also which in itself would be sufficient to hold the driver of the offending vehicle was negligent.

10. Secondly, the driver-cum-owner of the vehicle was the best person to come and say that he was not negligent in driving but, after filing his written statement, he did not have courage to appear and face the test of cross-examination as a witness. In such a situation also, adverse inference would be drawn against him.

11. Having found so, since the FIR was registered, the driver has been found negligent in the police investigation and he was facing trial for that and the eyewitness has stated regarding the accident having taken place in his presence, there is no reason to disbelieve the claimants' case as nothing has been brought on record by the respondents to rebut the same.

Accordingly, in my considered view, the appellant-Insurance Company has not been able to make out any case for interference in the impugned Judgement and Award, as no other ground was raised during the hearing of this matter save and except those discussed above.

In the result, this appeal is dismissed.

**May 03, 2019**  
*dharamvir*

**(DR. RAVI RANJAN)**  
**JUDGE**

|                            |     |
|----------------------------|-----|
| Whether speaking/reasoned: | Yes |
| Whether Reportable :       | Yes |