

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

FAO No.3144 of 2019(O&M)

Date of Decision: 28.08.2019

M/S. IFFCO TOKIO GENERAL INSURANCE CO. LTD.

.....APPELLANT

Vs.

GIRIRAJ SHARMA AND OTHERS

.....RESPONDENTS

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

Present: Mr.Subhash Goyal, Advocate for
the appellant-Insurance Company.

DR. RAVI RANJAN, J.(Oral Judgment)

CM No.16964-CII-2019

This application has been filed by the applicant-Insurance Company for placing on record copy of the testimony of PW-5 and salary certificate which has been brought on record as Ex.P-29 before the Tribunal as Annexure A-1 & Annexure A-2 respectively as well as for exemption from filing the certified copies of the said Annexures.

In the facts and circumstances of the case, this application is allowed. Documents, i.e., copies of the testimony of PW-5 and salary certificate which have been brought on record as Ex.P-29 before the Tribunal, are ordered to be taken in record as Annexure A-1 & Annexure A-2 respectively. Exemption is also allowed as prayed for.

FAO No.3144 of 2019(O&M)

This appeal has been preferred by the Appellant-Insurance Company assailing the Judgment and Award dated 08.12.2018 passed by the

Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as “the Tribunal) in Case No.MACP/27/2016 holding that the claimants (respondents herein) would be entitled for a compensation of Rs.37,00,000/- alongwith simple interest @ 9% per annum to be calculated from the date of institution of the claim till its realization.

The claim petition was filed before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of unfortunate death of one Giriraj Sharma son of Sh. Gaya Lal Sharma in a motor-vehicular accident. The claimant No.1(i) and (ii) are the sons whereas claimant No.1(iii) is the widow of the deceased.

Brief fact necessary for consideration of the *lis* stands enumerated as under:-

As per the case of the claimants, on the fateful day, i.e., on 10.06.2015 at about 10.00 P.M., Giriraj Sharma(since deceased) and his brother Mahesh Kumar, were returning from Ballabgarh to their house on motorcycle bearing Registration No. HR-29-Z-9306. The deceased was the pillion rider as the motorcycle was being driven by his brother Mahesh Kumar at a very moderate speed on correct side of the road with due care and caution. When they reached near petrol pump at village Panhera Khurd, Tehsil Ballabgarh, District Faridabad, said Mahesh Kumar dropped his deceased-brother there for refueling the bike. In the meantime, the offending vehicle, i.e., Maruti Alto Car bearing Registration No.HR-29-Z-1197 came at a very high speed being driven by respondent No.1 (before the Tribunal) in a rash and negligent manner and without blowing horn it hit the deceased who fell down on the road and sustained multiple grievous injuries all over his body. The driver of the offending vehicle stopped the vehicle at a short distance. Then Mahesh Kumar

noted down its registration number. Immediately after the accident, the injured was taken to Sarvodaya Hospital, Sector-8 Faridabad and remained admitted as indoor patient but ultimately, injured-Giriraj Sharma succumbed to his injuries on 23.04.2016.

In the aforesaid background of factual matrix, I have heard learned counsel for the appellant-Insurance Company.

The sole issue which has been raised on behalf of the appellant-Insurance Company at the time of hearing of the appeal is regarding consideration of salary of the deceased-Giriraj Sharma for computing the annual loss faced by the claimants due to his death in motor vehicular accident. It is contended by learned counsel that though the salary certificate has been brought on record as Ex.P-29 before the Tribunal but PW5-Dinesh Chand Kala, partner of M/s. Interacity Couriers, Kalkaji, New Delhi, has categorically stated that he has not brought any Register on record to show that such salary was being paid to him and, as such, on the basis of salary certificate, the salary of deceased cannot be said to have been proved. It is further stated that admittedly in the Register which he had brought on record, Rs.16,000/- has been shown at two places. Thus, it is urged that salary of the deceased of Rs.20,200/- per month is not proved.

However, upon perusal of the testimony of the aforesaid witness, i.e., PW5-Dinesh Chand Kala, which has been placed on record by the appellant-Insurance Company, it appears that he has clearly stated that the deceased was appointed in the year 2000 in the firm and since 2002, he was working on a regular post on a salary of Rs.20,200/-. Having said so in his examination-in-chief, he has brought on record Ex.P29 which is a certificate granted by the firm, v.i.z, Interacity Couriers, Kalkaji, New Delhi. The

certificate indicates in clear terms that his present salary was as under:-

Basic Salary : Rs.10,500/-per month

HRA : Rs.6,000/-per month

Daily allowance : Rs.3700/-per month

In the cross-examination, though he has stated that he has not brought any document on the basis of which the salary certificate was prepared but he has brought on record an Attendance Register to show that the deceased- Giriraj Sharma was working there and was attending the office regularly.

So far as entry of Rs.16,000/-per month proved at two places in the Register, on such question being asked, it has been answered by him that the balance amount to be paid to the deceased has been shown at two places as obviously there would be no requirement of every time writing the take home salary of the concerned employee in the Attendance Register.

Having perused the aforesaid and having heard learned counsel for the appellant-Insurance Company, this Court is of the view that though a suggestion has been made to the aforesaid witness that Ex.P29 is a fake and bogus document and the deceased never worked in the firm, that would not be sufficient to dislodge or non-suit the claimants on such issue as in its term the Insurance Company has completely failed to bring on record any oral or documentary evidence to rebut the evidence led by the claimants.

In such a situation, keeping in mind that the yardstick or the test which is to be applied while deciding the motor claim compensation case by a Tribunal, which is a summary proceeding and in a nature of inquiry as per Section 168 of the Motor Vehicles Act, 1988, would not be such strict or stringent which would be required to be done in a criminal trial in which the prosecution has to prove its case beyond all reasonable doubt.

A reference in this regard is made to the decision of Hon'ble Apex Court rendered in '**Sunita & others Vs. Rajasthan State Road Transport Corporation & Another, AIR 2019 SC 994**'. The Hon'ble Apex Court, after considering the earlier decisions made by the Apex Court on the issue, has come to the conclusion that the claimant cannot be put to such strict proof of the claim or issue as is to be put to the prosecution to prove its case in a criminal trial.

Accordingly, in my considered view, the appellant-Insurance Company has not been able to check out any cogent ground or question of law warranting interference in the impugned Judgement and Award.

In the result, this appeal fails and is accordingly, dismissed. However, there would be no order as to costs.

Before parting with the matter, I deem it desirable to record that no other issue was raised by the learned counsel for the appellant save and except one that has been considered as above.

(DR. RAVI RANJAN)
JUDGE

28.08.2019

Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No