

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

FAO No.3131 of 2019(O&M)
Decided on:06.09.2019

National Insurance Company Limited

.....Appellant

versus

Lalita Devi and others

....Respondents

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

Present: Mr.B.S.Taunque, Advocate,
for the appellant.

DR.RAVI RANJAN, J. (Oral Judgment)

CM-10723-CII-2019

This application has been filed for condoning the delay of 57 days which has occurred in preferring the appeal.

Having regard to the averments made in this application, the same is allowed and the delay of 57 days in filing the appeal is hereby condoned.

FAO No.3131 of 2019

This appeal has been preferred by appellant-Insurance Company assailing the Judgement and Award dated 04.12.2018 passed by the Motor Accident Claims Tribunal AT, Rewari in case No.MACT/854/2018 by which, on consideration of the case put forward by the rival parties, the Tribunal found the petitioners/claimants to be entitled for a compensation of an amount of ₹22,12,000/- on account of death of one Somveer in a motor vehicular accident.

1. The appellant-Insurance Company has preferred this appeal chiefly on two grounds. First is that rash and negligent driving by the driver of the offending vehicle is not proved. Secondly, the Tribunal, without any rhyme and reason, has assessed the monthly income of the deceased to be ₹10,000/- per month.

2. Brief facts which would be necessary for consideration of *lis*, stands enumerated as under:

As per the case of the petitioners/claimants, on the fateful day, i.e. on 18.03.2018, the deceased Somveer was returning to his home from Hero Honda Agency at Bahu Jholri. When he reached near Ganesh Dharamkanta, at about 9/9:30 PM, one Aulto car having registration No.HR-19-B-0269, came in a rash and negligent manner and due to such driving by the driver of the said car, an accident took place. In the result, Somveer sustained serious and fatal injuries and succumbed to them on the spot. FIR bearing No.46 dated 19.03.2018, was lodged under Sections 279 and 304-A of the IPC at Police Station Kosli. The petitioners/claimants also claimed that they had spent ₹1,00,000/- on the transportation and last rites. It is further case of the claimants that at the time of accident the deceased was 28 years old and was earning ₹20,000/- per month as he was working as a motor mechanic in Hero Honda Agency at Bahu Jholri and the family members were dependent upon him. Accordingly, the petitioners/claimants filed the claim application seeking a compensation amount of ₹50 Lakh alongwith interest at the rate of 24% per annum from the date of accident, till its realisation.

3. The respondents no.1 and 2, being the driver and the owner respectively, responded to the notice issued by the Tribunal and contested

the claim by filing written statement, in which they denied the allegations made in the claim petition, specifically regarding the time, date, place and manner of accident. Their case is that no such accident had taken place involving their vehicle and a false case has been registered by the petitioners/claimants in collusion with the police. However, at the same time it has also been stated by them that in case the Tribunal comes to the conclusion that the claimants are entitled for compensation then, since the vehicle was duly insured with respondent no.3 and respondent no.1 (the driver) was holding a valid and effective driving licence at the time of accident, respondent no.3-Insurance Company should be held liable to indemnify the liability of the insured, i.e. respondent no.2.

4. Respondent no.3/appellant-Insurance Company also filed its written statement resisting the claim application on diverse grounds, for example, lack of cause of action, suppression of material facts and the fact that the respondent no.1 was not holding a valid and effective driving licence at the time of accident. It also denied other contents of the claim petition and further took a stand that the FIR is the result of collusion between the petitioners/claimants and respondents no.1 and 2 with the police. That apart it was also contended that the compensation amount claimed was at the excessive side.

5. The Tribunal, on consideration of rival pleadings framed following issues:

1. Whether the accident in question took place on 18.03.2018 at around 9/9:30 P.M. within the jurisdiction of police station Kosli due to rash and negligent driving of respondent no.1?OPP
2. If issue no.1 is prove, then from whom the petitioners are entitled to claim compensation?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. Whether respondent no.3 is liable to indemnify the liability of the respondent no.2? OPR

5. Whether the claim petition is not maintainable in the present form? OPR

6. Relief.

6. All the findings on the concerned issues were returned in favour of the petitioners/claimants and against the respective respondents.

7. In order to persuade this Court to hold that there is absolute lack of evidence for coming to a conclusion that the accident was the result of rash and negligent driving by respondent no.1 (driver), learned counsel for the appellant-Insurance Company has drawn the attention of this Court towards the testimony of the claimant's eyewitness Birender who has been examined as PW2. His deposition has been appended with this memo of appeal as Annexure A-1. It is contended that though in the affidavit he says that he came at the house of Bal Kishan, Lambardar in village Garhi at about 8:00 PM and at about 9:00 PM he came at Khurd Chowk after meeting him, he saw that an Alto car bearing Registration No.HR-19B-0269 which was being driven in a rash and negligent manner at high speed dashing with the motor cycle and he noted down the number of the Alto car and saw that, after the accident, the driver of the car ran away from the spot, however, in the cross-examination, he has stated that though he was present on the spot at the time of accident and the police had recorded his statement there, but surprisingly no FIR was lodged at his behest even though the claim is that the police had recorded his statement on the spot itself. A suggestion was given to him that actually he had not seen any accident and no accident actually took place involving the Alto car and he was falsely deposing to help the petitioners. However, such suggestions have been

denied by him.

On the strength of the aforesaid, learned counsel for the appellant has submitted that he has been inducted later on purposely as an eyewitness though he was actually not. Satish Kumar RW3, i.e., the driver has admitted in his deposition that he was facing trial under Sections 279, 337 and 304-A of the IPC in case FIR No.46 dated 19.03.2018 but he has been falsely implicated in the case. He had denied that he was driving the said Alto car bearing No. HR-19B-0269 but, at the same time, he has admitted that after the investigation, the police has charge-sheeted him under the aforesaid sections and a challan has been filed against him at Kosli Court.

8. It is urged on behalf of the appellant-Insurance Company that in the aforesaid facts and circumstances there was no material before the Tribunal to hold that there was rash and negligent driving by the driver of the concerned vehicle.

It has been vehemently argued on behalf of the appellant that since there was no registration number and name of the driver disclosed in the FIR, the said name of the driver and registration number of the alleged vehicle were later on inducted by the petitioners/claimants in collusion with the owner and the driver and the police. What is being indicated by learned counsel at the time of hearing is that some fraud has been played by inducting the name of the driver and the registration number of the said vehicle later on only to benefit the petitioners/claimants so that compensation amount could be paid by the Insurance Company to them. But learned counsel forgets that for proving fraud, the cardinal principle is that there should be specific pleading in that regard and that would be required

to be proved thereafter like an issue to be proved in a criminal trial. On perusal of the testimony of PW2, it appears that a suggestion was made that he had falsely given the registration number of the car to help the petitioner but there is no suggestion as who were the parties to the fraud and how and in what manner the police was involved in the fraud and in what manner fraud has been committed. That apart, there is no evidence led by the Insurance Company to prove that. In the absence of the above, solely on raising such question at the time of hearing that the deponent has falsely implicated the concerned vehicle to help the petitioners/claimants would not be sufficient especially when the owner has been examined as RW2 and he has denied the suggestion that he has helped the petitioners/claimants by giving or planting his vehicle in the criminal case. There is no *iota* of evidence that they were in collusion with the petitioners/claimants. Apart from the above, it is the admitted case that the FIR was lodged and, after investigation, the police has submitted its final report under Section 173 Cr.P.C. indicting the driver of the vehicle for rash and negligent driving resulting in the concerned motor-vehicular accident.

By now it is well settled that for proving a case before the Tribunal, which is in dealing with the matter of assessment of compensation amount to be granted to the dependents of the deceased who had died in a motor vehicular accident, being in the nature of inquiry only and summary proceeding, the strict liability of proving the case beyond all reasonable doubt, as is required in a criminal trial, is not required at all. Reference is made in this regard to the decision of the Apex Court rendered in **“Sunita and others Vs. Rajasthan State Road Transport Corporation and another,” AIR 2019 SC 994**, in which it has held that strict interpretation

of the evidence on the touchstone of proof beyond all reasonable doubt is not required in such cases and the Tribunal would be required to assess the evidence on the touchstone of preponderance of probabilities.

The Apex Court in aforesaid Judgement has also considered a case in which, though the driver was prosecuted for rash and negligent driving in a criminal case but ultimately he was acquitted of the charges. Even then, it has been held, since the FIR was lodged against him and the final report was submitted by the police under Section 173 Cr.P.C. and since the acquittal or conviction by the criminal Court depends upon the strict proof of the case by the prosecution beyond all reasonable doubts, that would not be sufficient to dislodge the claimants.

Accordingly, I hold that the finding recorded by the Tribunal holding the driver to be rash and negligent and his driving being the cause of the accident in which the Somveer has lost life, cannot be faulted with.

9. The second issue raised on behalf of the appellant-Insurance Company is with regard to assessment income of the deceased. It is apparent that in the claim petition the petitioners/claimants have claimed that the accident took place in between when the deceased, who was working as a mechanic in Hero Honda Agency, Bahu Jholri, was returning to his home. However, at the same time it is also a fact that nothing could be brought on record by the claimants to show that he was earning ₹20,000/- per month by working in Hero Honda Agency, Bahu Jholri. It is contended that in such cases only minimum wages which a person would be entitled as per the notification by the State of Haryana, could have been taken by the Tribunal as his income whereas the Tribunal, without any rhyme and reason has assessed the income of the deceased at ₹10,000/-.

At the time of hearing, the concerned executive instruction based on notification by the State of Haryana has been produced. Accordingly to it, from 01.01.2018 the unskilled labour was entitled for minimum wage of ₹8497.56 per month, whereas the semi-skilled(A) category would be entitled for ₹8922.43 per month and semi-skilled (B) category would be entitled for ₹9368.54 per month. The skilled person in (A) category would be entitled for ₹9836.97 whereas skilled person for (B) category it would be ₹10328.83. Now the question is, if he was working as a mechanic then he cannot be treated as unskilled labour. He has to be treated as a skilled or atleast semi-skilled. In that case the minimum wages would be either slightly above ₹10,000/- or slightly below ₹10,000/-, at best it could be a difference of ₹800-₹900 per month. Of course, there is no evidence led by the petitioners/claimants that the deceased was working as a motor mechanic in Hero Honda Agency at Bahu Jholri but, at the same time, it would be very difficult for the claimants to bring to the Tribunal or the Court, the concerned persons to appear as a witness. Sensing such difficulty and also having considered the fact that the provision under which the cases of compensation are decided, are benevolent one. Proceeding is under beneficial legislation and its object is to support the family of the deceased who died in a motor vehicular accident, in my considered view, even if there is error on the part of Tribunal in assessing the income which comes to about ₹800 - ₹900 per month, it should be ignored as otherwise for such a meager amount the claimants would have to be dragged for further litigation in the High Court.

10. Having regard to the aforesaid facts and circumstances, in my considered view, no good ground could be raised by the appellant-Insurance

Company warranting interference in the Judgment and Award pronounced by the Tribunal.

In the result, this appeal is dismissed.

September 06, 2019
dharamvir

(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable :	Yes