

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

FAO-6437-2012 (O&M)

Date of decision: 18.12.2019

United India Insurance Company Ltd.

...Appellant

Versus

Smt. Raj Kumari and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Sanjiv Pabbi, Advocate for the appellant.

Mr. Nitin Mittal, Advocate
for respondents/cross objectors No.1 to 5.

Ms. Rajni, Advocate for Mr. Surjit Kumar, Advocate
for respondents No.6 & 7.

H.S. MADAAN, J.

Smt. Raj Kumari-widow, aged about 32 years, Rahul, aged about 05 years-minor son, Saniya aged about 03 years-minor daughter, Darshani Devi, aged about 65 years-mother and Prem Chand, aged about 66 years-father of Naresh Kumar, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') against respondents i.e. Shyam Lal-driver, Asha Rani-owner and United India Insurance Company Ltd., Mohali-insurer of Maruti Car

No.HR-70-0171 (for brevity 'the offending car'), claiming compensation.

Briefly stated facts of the case are that on 15.02.2008, deceased Naresh Kumar along with Baljeet Chand @ Baljeet and Hari Singh was going from Shahzadpur to Village Kurali, Tehsil Naraingarh, District Ambala, on a new Splendor motorcycle without number which was being driven by deceased Naresh Kumar on correct left hand side of the road at a moderate speed. At about 8.30/9.00 PM, when they reached at Bibipur T-point on Shahzadpur to Ambli Road, in the meanwhile, the offending car being driven by respondent No.1 in a very rash and negligent manner came from the opposite side. On seeing such type of driving of the car, Naresh Kumar took the motorcycle on extreme left hand side of the road on kacha berm but the offending car hit against the motorcycle by going on wrong side of the road. Resultantly, the three riders on the motorcycle fell down along with the motorcycle and suffered multiple injuries. Shyam Lal driver of the car stopped it but on seeing condition of the injured persons, he sped away the car. All the three injured were taken to Civil Hospital Naraingarh, however, on the way, Baljeet Singh succumbed to the injuries suffered by him in the accident. Injured Hari Singh and Naresh Kumar were referred to PGI, Chandigarh. Later on, Naresh Kumar also succumbed to the injuries. As per version of the claimants, Naresh Kumar was working

as a shopkeeper and earning Rs.8000/- per month. The claimants were dependent upon his earnings. At the time of his death, he was aged about 30 years and was only bread winner of the family.

On getting notice, all the three respondents put in appearance.

Respondents No.1 & 2 filed a joint written statement, denying the involvement of the offending car in the accident, stating that a false FIR has been got registered by claimants against respondent No.1. They prayed for dismissal of the claim petition.

In the written reply filed by respondent No.3-insurance company, it had taken various legal objections and statutory defences, contending that the driver of the car was not holding a valid and effective driving licence at the time of accident and otherwise, terms & conditions of the insurance policy were violated. In the end, such respondent prayed for dismissal of the claim petition.

On pleadings of the parties, the following issues were framed:-

1. Whether Naresh Kumar died in a motor vehicular accident occurring on account of rash and negligent driving of Maruti Car No.HR-70-0171 by respondent No.1? OPC.
2. Whether claimants are entitled to the compensation as prayed for. If so, to what extent and from whom? OPC.
3. Whether respondent No.1 was not holding legal and valid

- driving licence at the time of accident, if so, its effect? OPR-3.
4. Whether the respondent No.1 had committed breach of terms and conditions of the insurance policy, if so, its effect? OPR3
5. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, SAS Nagar, Mohali (for short 'the Tribunal') decided issues No.1 & 2 in favour of the claimants against the respondents, issue No.3 was decided in favour of respondent No.1, whereas, issue No.4 was not pressed during the course of arguments and as such, decided against respondent No.3 and vide award dated 04.09.2012, the claim petition was accepted as against claimants No.1 to 3 and compensation of Rs.6,10,000/- with interest @ 9% p.a. from the date of filing of claim petition till actual realization was awarded to the petitioners/claimants. The respondents were held liable to pay this amount jointly and severally. It was directed that the compensation amount be apportioned in equal shares amongst all the claimants, whereas, share of claimants No.2 & 3 who are minors be deposited with some nationalized bank in the form of FDRs, till they attain majority.

However, respondent No.3-insurance company felt aggrieved by the said award and has approached this Court, by way

of filing the present appeal, notice of which was given to the respondents, who have put in appearance through counsel to offer a contest. The claimants have also preferred cross objections for enhancement of compensation awarded to them by the Tribunal, notice of which was given to the insurance company.

I have heard learned counsel for the parties besides going through the record.

The first and foremost argument advanced by learned counsel for the appellant-insurance company was that registration number of the vehicle and name of the driver are not mentioned in the FIR and the FIR was recorded on the basis of statement of PW3 Baldev Singh made to the police on 17.03.2008 i.e. after one month of the accident. As a matter of fact, Baldev Singh was not present at the spot because if he had been there, he would have taken the injured to the hospital and would have reported the matter to the police either on the same day or on the next day. There appears to be collusion between the parties and the insured vehicle has been involved in this case to claim compensation from the insurance company. Even the driver has been acquitted by the criminal Court on the ground that his identity was not established.

Whereas, learned counsel for the claimants has vehemently contested such contentions, stating that the delay in reporting the matter does not have much bearing on this case and the

claimants have successfully established their case that the accident in which the deceased had lost his life had taken place on account of rash and negligent driving of the offending car by respondent No.1 Shyam Lal.

After hearing the rival contentions and going through the record, I find that the arguments advanced by learned counsel for the appellant are without any merit. [Section 166](#) of the Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions. This is unlike a criminal case where guilt of the accused to the hilt is required to be established by the prosecution. It is for the reason that life and liberty of a person is involved, therefore, very strict proof is expected in a criminal case. Delay in lodging the FIR may be a relevant factor in a criminal case but it is not so while adjudicating a claim petition under Section 166 of the Act. The Tribunal on proper analysis of the evidence and correct interpretation of law has rightly come to the conclusion that respondent No.1 Shyam Lal was author of the accident by his rash and negligent driving of the offending car, in which deceased Naresh Kumar had lost his life.

Petitioner/claimant Raj Kumari getting her statement

recorded as PW1 repeated on oath her case as given in the claim petition. PW3 Baldev Singh had also deposed in consonance with the case of the claimants. In rebuttal, respondent No.1 did not step into the witness box to state on oath that he had not caused the accident by his rash and negligent driving of the offending car. Similarly, Asha Rani owner of the offending car did not get her statement recorded to show that the car belonging to her was not involved in the accident. Counsel for respondent No.3 had tendered in evidence copy of judgment dated 04.09.2012, vide which Shyam Lal had been acquitted by the criminal Court. But that judgment does not help the respondents much. The fact remains that Shyam Lal was booked for causing the accident. On completion of investigation, he was challaned and sent up to face trial and on conclusion of the trial, though, he was acquitted but the reason for the same that the witnesses had not identified the accused. Judgment of a criminal Court is not binding upon the Tribunal, though, it may have some relevance in the matter. The Tribunal is to reach its own conclusion on the basis of evidence adduced before it. Though, according to the insurance company, there has been collusion between the claimants and respondents No.1 & 2, but that does not come out to be there. It is very difficult to believe that respondent Shyam Lal would have offered himself to be arrested, then getting himself bailed out and facing trial in the Court attending numerous dates of hearing there,

with a possibility of being sent behind the bars without any rhyme or reason. Similarly, respondent No.2 Asha Rani would not have invited the hassles of getting her car taken into possession by the police, getting it released on superdari, producing it in the Court on each and every date of hearing, just for the sake of helping the petitioners/claimants. Therefore, the allegations of collusion between the parties do not make any sense.

As regards non mentioning of name of the driver and registration number of the car in the FIR, FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR regarding the commissions of a cognizable offence can be lodged by a person who might or might not have seen the accident/incident himself. It is only during the investigation of the case that the complete story gets unfolded regarding the manner of the commission of the offence, persons involved therein. Therefore, no fault can be found with the verdict recorded by the Tribunal that rash and negligent driving of the offending car by respondent No.1 Shyam Lal had caused the accident, in which Naresh Kumar had lost his life.

One more argument advanced by learned counsel for the appellant was that three persons were riding the motorcycle, which is against law and it is for that reason, the accident might have taken place or at least it should be taken as a case of contributory

negligence. In support of his contentions, he has referred to a judgment by a Co-ordinate Bench of this Court **Angrejo Devi and others Vs. Jai Parkash and others, (2012-4) PLR 604**, wherein it was observed that motorcycle is designed to ride two persons and if used by more than two persons, then the driver will have to share part of his seat; he will not be able to control the vehicle effectively. Moreover, the weight on account of third passenger will affect its stability. In that case, the deceased was driving the motorcycle in violation of Section 128 of the Act with two passengers on the pillion seat. Therefore, the Tribunal had rightly come to the conclusion that it was a case of contributory negligence of deceased Dharam Singh and respondent No.1 in ratio of 50% each.

However, learned counsel for the claimants has contended that there is nothing on record to show that Naresh Kumar had lost control of the motorcycle or there was any fault in his driving. Therefore, he had not contributed to the accident in any way.

After hearing the rival contentions of learned counsel for the parties, I find that though triple riding of a motorcycle cannot be approved and it is an offence under Section 128 of the Act, but then the crucial thing to be seen in this case is as to whether Naresh Kumar was not having full control over his motorcycle or that he was driving it in a wrong manner. There is nothing on record to show that, rather, it is consistent case of the claimants that Naresh Kumar

was driving the motorcycle at a moderate speed on correct left hand side of the road and on seeing the offending car coming from opposite side being driven in a rash and negligent manner, he had taken the motorcycle on extreme kacha berm of the road but the car by going on extreme left hand side had hit the motorcycle. There is no statement of respondent No.1 in that regard. Therefore, it cannot be taken to be a case of contributory negligence. The judgment cited by learned counsel for the appellant is not helpful to him due to different facts and circumstances and the context in which such observations had been made. Therefore, finding no merit in the appeal filed by the insurance company, the same stands dismissed.

Now coming to the cross objections filed on behalf of the claimants, for want of cogent and convincing evidence adduced by the claimants, the Tribunal did not accept their contentions that deceased was running a shop and earning Rs.8000/- per month. However, his monthly income was assessed to be Rs.5000/-, which is quire proper and appropriate. His age was taken to be 40 years. However, no amount has been added towards future prospects. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,** when the deceased was in the age group of 40-50 years and was self employed, then an addition of 25% is to be made towards future prospects. In that way, the monthly income of the deceased is

calculated as Rs.6250/- (5000+1250).

Considering the number of dependent family members, 1/3rd of the amount is to be deducted towards personal and living expenses of the deceased. Doing that, the monthly dependency of the claimants comes out to Rs.4167 (6250-2083), annual dependency Rs. 50,004/-.

Considering the age of the deceased, multiplier of 15 was rightly applied by the Tribunal. In that way, the total compensation is worked out to Rs.7,50,060/-.

In view of the judgment **Pranay Sethi's** (supra), the claimants are entitled to get Rs.15,000/- on account of loss of estate, Rs.15,000/- as funeral expenses and petitioner No.1-widow is entitled to get Rs.40,000/- on account of loss of consortium. Total amount under conventional heads comes out to Rs.70,000/-. Adding that amount, the total compensation payable is arrived at Rs.8,20,060/-.

The Tribunal has awarded compensation of Rs.6,10,000/- to the claimants. Thus, an additional compensation payable to the claimant is arrived at Rs.2,10,060/- (Rs.8,20,060 – 6,10,000/-) along with interest @ 7.5% p.a., from the date of filing of appeal till actual realization. The liability to pay this amount would be joint and several of the respondents. The apportionment, mode and manner of payment shall remain the same as directed by the Tribunal in the impugned award.

Accordingly, the appeal filed by insurance company i.e. FAO-6437-2012 is dismissed and cross objections filed by the claimants i.e. XOBJC-149-CII-2014 stands partly allowed.

18.12.2019
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No