

FAO-3862-2015(O&M) &
FAO-4599-2015(O&M)

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

(1) FAO-3862-2015(O&M)

Shriram General Insurance Company Ltd.

...Appellant

Versus

Smt.Meenu and others

...Respondents

(2) FAO-4599-2015(O&M)

Smt.Meenu and others

...Appellants

Versus

Satbir Singh and others

...Respondents

Date of Decision:-1.8.2019

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

Argued by: Mr.Ashwani Talwar, Advocate
for the appellant in FAO-3862-2015 and
for respondent No.3 in FAO-4599-2015.

Mr.Kulvir Narwal, Advocate
for the appellants in FAO-4599-2015 and
for respondents No.1 to 5 in FAO-3862-2015.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-3862-2015(O&M) filed on behalf of appellant Shriram General Insurance Company Ltd. and FAO-4599-2015(O&M) filed on behalf of appellants – Smt.Meenu and others, which have arisen out of the same accident.

Smt.Meenu – wife, Master Jatin – minor son, Baby Kanika – minor daughter, Smt.Kamla Devi – mother and Sh.Sant Lal – father of Bhanwar Singh, who perished in a road side accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Satbir Singh – driver, Proprietor M/s Kundu Construction Company, Rohtak – owner and Shri Ram General Insurance Company Ltd. - insurer of the Dumper bearing registration No.HR-46B-8478 (hereinafter referred to as the offending vehicle), claiming compensation.

As per the case of the claimants, on the intervening night of 14/15 October, 2012, wife of Bhanwar Singh, namely, Meenu – claimant was not feeling well, so Bhanwar Singh was asked telephonically to come home; that he started his journey from Badli for his village Dhour on a motorcycle; that he reached Jhajjar safely; that village Dhour is at a distance of 5 kms. from Jhajjar and it was a straight and newly constructed road, which leads to Beri; that Bhanwar Singh was driving the motorcycle on the left side of the road; that when he reached in front of hotel of Sat Narain, then a vehicle came from the opposite direction blinding the sight of the deceased by its high beam; that it was a complete dark night; the motorcycle driven by Bhanwar Singh dashed against the

offending vehicle, which was parked on the metaled road, due to mechanical fault without adequate parking lights; that no indicators of the offending vehicle were blinking for cautioning the incoming vehicles; that no bushes or stones were scattered and no fire was burnt on the road; that as a result of impact, Bhanwar Singh received head injuries and he died instantaneously; that the accident was witnessed by Sat Narain, owner of the hotel, who was acquainted with the deceased; that Sat Narain immediately informed the petitioners; that relatives and neighbours rushed to the spot immediately and somebody informed the police; that the police reached at the spot at night time; that on account of death of Bhanwar Singh, his family members were in state of shock and they signed the papers as directed by the police; that after completion of necessary formalities by the police, the dead body was shifted to General Hospital, Jhajjar for autopsy; that the ill-fated motorcycle and the offending vehicle were taken into possession by the police from the spot. According to the claimants, the accident had taken place on account of sole negligence of respondent No.1 – Satbir Singh. Mohan Lal, brother of the deceased lodged the FIR No.702 dated 24.10.2012 for the offences under Sections 283, 304-A IPC regarding the accident.

On notice, all the three respondents had appeared. Respondents No.1 and 2 filed a joint written statement, whereas respondent No.3 – insurance company filed a separate written statement.

In the joint written statement filed on behalf of respondents No.1 and 2, they denied the factum of accident, however, they submitted that the vehicle in question was parked on the extreme left side of the road

on the kacha portion with all precautions. In the end, such respondents prayed for dismissal of the claim petition.

In the written statement filed on behalf of respondent No.3 – insurance company, it had raised various preliminary objections contending that the terms and conditions of the insurance policy were violated. Such respondent also denied the factum of accident. It also submitted that the respondent No.1 was not holding a valid and effective driving licence at the time of accident.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing of the parties, the Tribunal decided issue No.1 in favour of the petitioners and against the respondents holding it to be a case of contributory negligence. Issue No.2 was decided in favour of the petitioners against the respondents awarding total compensation to the tune of Rs.23,70,000/-, further observing that deceased Bhanwar Singh was equally negligent in driving the ill-fated motorcycle and thus the awarded compensation amount was reduced by 50% and the petitioners were held entitled to receive Rs.11,85,000 along with interest at the rate of 8% per annum from the date of filing of petition till realization. Issue No.3 was decided in favour of respondents No.1 and 2 and against the respondent No.3 holding that respondent No.1 – Satbir was having valid and effective driving licence for driving LMV, LTV, HTV & HMV at the time of accident, therefore, no contravention of the terms and conditions of insurance policy had taken place.

Vide Award dated 12.1.2015, the Tribunal allowed the claim

petition partly with costs and granted compensation of Rs.11,85,000/- along with interest @ 8% per annum from the date of filing of the petition till actual realization to the claimants. The manner in which the compensation is to be apportioned is also given in the award.

The appellants/petitioners/claimants being of the view that the compensation awarded was on lower side and further that the deceased Bhanwar Singh was wrongly held responsible for the accident, have approached this Court by way of filing an appeal seeking enhancement of compensation.

On the other hand, respondent No.3 – insurance company feeling that the amount of compensation awarded is on the higher side has also filed an appeal.

Notices of the appeals were issued to the respondents, who put in appearance through counsel.

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

To establish their case that the accident in question had taken place on account of rash and negligent act on the part of respondent No.1 Satbir Singh – driver of the offending vehicle, the claimants had examined Sat Narain as PW2. He having a hotel at the place of accident, his presence at the spot is natural and probable. Sat Narain in his affidavit Ex.PW2/A deposed in consonance with the case of the claimants contending that the offending vehicle was standing on the metaled road, in front of his hotel due to mechanical fault since the evening of 14.10.2012; that the parking lights of the offending vehicle were not in working

condition and were not blinking and no indication was put by the offending vehicle driver for cautioning the incoming vehicles. In the affidavit he has further contended that in the midnight a motorcycle had come from Jhajjar side and the motorcyclist could not see the offending vehicle due to the high beam of the vehicle coming from the opposite side, due to which motorcycle met with the accident. Although he was subjected to lengthy cross-examination but his credibility could not be shattered on any material point. He had no reason to depose falsely in favour of the claimants and against the respondents. In rebuttal, the respondents have examined Jasbir Singh as RW1, who submitted his affidavit Ex.RW1/A stating therein he is working in Kundu Construction Company as a Manager and looks after the transport department of this company and that vehicle in question has been falsely involved in this case. In his cross-examination, he had admitted that he is not an eye-witness of the accident. Satbir Singh – respondent No.1, who could have thrown light in the matter felt shy of stepping into the witness-box to depose that all the precautions had been taken while parking the offending vehicle on the road side. The evidence adduced by the claimants has gone un rebutted. In addition to the cogent and convincing ocular evidence produced by the claimants, they have produced in evidence copy of FIR, copy of site-plan, copy of recovery memo of the offending vehicle and copy of report under Section 173 Cr.P.C. All those documents fully corroborated the case of the claimants and it comes out that respondent No.1 – Satbir Singh was arrested by the police and on completion of investigation sent up to face trial for causing the accident. In absence of

any evidence, the Tribunal merely on the basis of guesswork and conjectures has given the finding that it was a case of contributory negligence. The motorcyclist going on the road could not have possibly anticipated that some vehicle was parked on the road unless some indications like blinking parking lights was there or it was surrounded by some sticks etc. or some warning signal was placed nearby. Therefore, the finding of the Tribunal to hold the motorcycle driver was also responsible for the accident was uncalled for and wrong.

Learned counsel for the insurance company has referred to authority *Nishan Singh & Ors. Versus Oriental Insurance Company Ltd. through Regional Manager & Ors., 2018(2) RCR(Civil)891* by the Apex Court, wherein it was observed that question of contributory negligence arises when both parties are involved in the accident due to rash and negligent driving and that when car was following truck and no fault can be attributed to truck driver, blame must rest on driver of car for having driven his vehicle rashly and negligently.

This judgment does not help the insurance company for various reasons. Firstly none of the respondents has admitted the accident in question what to talk of taking up a plea of contributory negligence. Furthermore, the respondents have not led any evidence in that regard. As already observed, respondent No.1, who could be an important witness for the respondents did not get his statement recorded in that regard. The witness examined by the respondents was not present at the spot and his testimony is not of much value. It was for the respondents to show that the offending vehicle was not parked on the metaled portion of the road or

that the parking lights were blinking or further that all the precautionary measures had been taken to ensure that the vehicles coming on the road were warned about such vehicle having been parked on the road. In absence of such evidence, the plea of contributory negligence cannot be sustained. This judgment does not come to help of the appellant – insurance company in any manner.

On the other hand, the appellants/claimants had referred to judgment passed in FAO-1667 of 1997 having title '**National Insurance Company Ltd. Versus Sandeep Madan and others**', decided on 26.7.2016 by a Co-ordinate Bench of this Court wherein it was observed as under:

I have gone through the citations referred by learned counsel for the appellant. Each case has its own peculiar facts and circumstances. The contributory negligence of the driver of the vehicle which hit stationary vehicle was fixed keeping in view the facts and circumstances of the cases referred by learned counsel for the appellant. If a vehicle is parked in the middle of the road during night time and some vehicle coming on road ram in it, no inference can be drawn that driver of vehicle coming on road was negligent. If a person is driving vehicle at a reasonable speed during night hours, he may notice stationary vehicle or any other substance lying in the middle of the road only when he reaches very near and by that time, despite applying full brakes, it may not be possible to stop that vehicle and to avoid hitting the stationary vehicle or substance lying on the road. In such circumstances, attributing negligence or contributory negligence to the driver of

moving vehicle in causing the accident will be very harsh conclusion.

*In case of **Jaspal Kaur and others Vs. Sach Khand Bricks Gram Udyog and others (supra)**, there was no evidence that the truck was parked on the metalled road. Keeping in view this fact, contributory negligence of the driver of the vehicle which hit stationary truck was held.*

*In case of **Lachhmi and others Vs. Ranjit Singh (supra)**, the facts of the case are not clear, as such, it cannot be made out as to under what circumstances, the driver of both the vehicles which met with accident were found to be equally responsible for the accident.*

*In case of **Subhash Chand and others Vs. Satya Rani and others (supra)**, the accident was not with a stationary vehicle, as such, the observations in that case has no impact on the facts and circumstances of this case.*

*In case of **Mewa Devi and Ors Vs. Ram Kumar and Ors 2016 (2) PLR 739**, this Court has observed that if a vehicle is parked on road without any indication, reflector, light, flag etc. fixed at the spot to indicate parking of vehicle on the road, there is no contributory negligence on the part of vehicle which came from behind and hit the stationary vehicle.*

Therefore, finding of the Tribunal on issue No.1 is modified and this issue is decided in favour of the claimants and against the respondents holding that Bhanwar Singh had died in a motor vehicular

accident, due to negligence on the part of respondent No.1 while parking of the offending vehicle on the metaled road without any indication, which is owned by respondent No.2 and insured with respondent No.3.

With regard to finding on issue No.3, verdict of which has been given in favour of respondents No.1 and 2 and against respondent No.3, the Tribunal had observed that Satbir was holding a valid and effective driving licence Ex.R1 for driving LMV, LTV, HTV & HMV valid up to 4.5.2014 and in terms of fitness certificate Ex.R4, the offending vehicle was fit to be plied up to 17.11.2012; national permit Ex.R5 indicating that it was valid for the period from 10.11.2009 to 9.11.2014, in that way there was contravention of terms and conditions of the insurance policy by respondents No.1 and 2 for the period from 28.12.2011 to 27.12.2012. I do not see any reason to differ with the Tribunal in that regard.

While deciding issue No.2, the Tribunal while calculating the quantum of compensation had though taken that the deceased was proprietor of Tehlaka Furniture House but did not accept the contention of the claimants that he was earning Rs.30,000/- per month, which was for the reason that the claimants had failed to produce the relevant record pertaining to sale and purchase of furniture and charges paid to workers etc.. The deceased was taken to be a skilled carpenter and his monthly income was assessed to be Rs.10,000/-. The Tribunal was justified in doing so and I do not see any reason to differ with the Tribunal in that regard. The age of the deceased was taken to be 29 years. The Tribunal had added 50% of the income towards future prospects. However, the

same is somewhat on higher side since in view of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.10,000 + 4,000 = Rs.14,000/-. Keeping in view the number of dependents, the Tribunal was justified in making deduction of 1/4th towards personal and living expenses of the deceased. Doing that the dependency of claimants comes out to Rs.10,500/- per month, annual dependency comes out to Rs.10,500 x 12 = Rs.1,26,000/-.

The Tribunal has used multiplier of 17, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.1,26,000 x 17 = 21,42,000/-.

The Tribunal has granted Rs.25,000/- as funeral expenses, Rs.25,000/- towards loss of consortium and Rs.25,000/- as loss of love and affection. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 21,42,000 + 70,000 = 22,12,000/-.

The Tribunal has awarded compensation of Rs.11,85,000/-. The same is enhanced to Rs.22,12,000/-.

Since in view of the above discussion, respondent No.1 has been found to be guilty of rashness and negligence in wrongly parking of the offending vehicle on the road without taking necessary precautionary

measures, respondent No.1 being driver, respondent No.2 being owner and respondent No.3 being insurer of the offending vehicle are jointly and severally liable to pay the compensation amount. The insurance company is liable to indemnify respondent No.2 insured with regard to liability to pay compensation to the claimants since no violation of the terms and conditions of the insurance policy has been found to be there. Furthermore, the conclusion arrived at by the Tribunal that it was a case of contributory negligence has also been set aside.

Furthermore, the interest awarded @ 8% per annum is somewhat on higher side. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.22,12,000/-. Since the amount has been enhanced, the directions with regard to release of compensation amount to the claimants shall stand modified proportionately.

With such modifications, both the FAO stand partly allowed.

1.8.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No