

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

FAO No.429 of 2016 (O&M)

Date of Decision: January 30, 2019.

United India Insurance Company Limited

.....APPELLANT(s).

VERSUS

Smt. Sumitra Devi and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.P. Gupta, Advocate
for the appellant (s).

Mr. V.P. Sangwan, Advocate for
Mr. Jai Bhagwan Sharma, Advocate
for respondents No.1 to 6.

SURINDER GUPTA, J.

This is appeal filed by United India Insurance Company Limited, the insurer of Haiwa Dumper bearing registration No.HR-39B-7664 against the award dated 21.10.2015 passed by Motor Accident Claims Tribunal, Bhiwani (later referred to as 'the tribunal') allowing compensation of ₹17,80,200/- for the death of Jaipal @ Bablu (later referred to as the deceased) in a motor vehicle accident.

As per case of the claimants, on 31.05.2014 the deceased was going on his tractor-trolley, which was hit by some unknown vehicle from behind, as a result of which, he fell down and got crushed under the moving vehicle. The matter was reported to the police and FIR No.440 dated

31.05.2014 for the offence punishable under Sections 279, 304A Indian Penal Code was registered at Police Station Sadar Bhiwani. During investigation, it was found that tractor trolley of deceased was hit by the vehicle bearing registration No.HR39B-7664 (later referred to as 'the offending vehicle') and respondent No.1-Ramesh driver and owner of the offending vehicle was arrested by the police.

Respondent No.1 in his written statement denied the accident with his vehicle and alleged his false implication.

Appellant-respondent No.2 also contested and controverted the plea of the claimants that the accident was caused by the offending vehicle.

The tribunal on appreciation of evidence observed in para 26 of the award as follows:-

“The version of the petitioners is that the accident in issue has been caused by the respondent no.1 while driving the offending vehicle rashly and negligently due to which Sh. Jaipal alias Bablu received the injuries and died. The version of the respondent No.1 is that he is innocent and has not committed any offence and has been falsely implicated in this case. The version of the petitioners has been corroborated by the witnesses PW1 to PW3. However, the FIR Ex.P2 was lodged against the unknown driver of the unknown Vehicle. In the petition the petitioners have impleaded the respondent No.1 to be the driver of the offending vehicle bearing registration No. HR39B/7664. To rebut it, the respondent No.1 has not stepped in the witness box. There is no evidence on behalf of the respondent No.1 in support of his version and in rebut (rebuttal) to the evidence of the petitioners. As per Ex.P4 copy of challan under section 173 Cr.P.C. filed against the respondent no.1 and Ex.P5 copy of

charge-sheet served upon the respondent no.1 further proves that the respondent no.1 Ramesh Kumar is facing criminal prosecution in respect of the accident in issue. Therefore, in the absence of any evidence on behalf of the respondent no.1, it is held that the accident in issue had been caused by the respondent No.1 while driving the offending vehicle rashly and negligently, in which Sh. Jaipal received the injuries and died.”

The amount of compensation awarded to the claimants was assessed as follows:-

Sr. No.	Heads	Calculations
(i)	Total monthly income assessed is	Rs.8000/- per month
(ii)	50% of (i) above to be added as future prospects	Rs.8000+4000= Rs.12,000/- per month
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	Rs.3000/-. The amount remains Rs.12000/- (-) Rs.3000/-=Rs.9000/- p.m.
(iv)	The assessment of per annum comes to	Rs.9000X12= Rs.1,08,000/- per annum.
(v)	Standard deduction of 10% of Income Tax	Rs.1,08,000(-) Rs.10800/- =Rs.97,200/-
(vi)	Compensation after applying multiplier of 16 comes to	Rs.97,200X16= Rs.15,55,200/-
(vii)	Loss of consortium to the petitioner no.1	Rs.1,00,000/-
(viii)	Loss of funeral and transportation etc.	Rs. 25,000/-
(ix)	Compensation on account of Love and affection.	Rs.1,00,000/-
	Total :	Rs.17,80,200/-

Learned counsel for the appellant has assailed the award on two counts: firstly, that the amount of compensation awarded to the claimants requires to be reassessed in view of the law settled by Hon'ble Apex Court in case of *National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009*. The tribunal has made addition of 50% in the income of the deceased towards loss of future prospects, which

requires to be reduced to 40% and the tribunal awarded a compensation of ₹2,25,000/- under the conventional heads, which is to be restricted to ₹70,000/-.

Learned counsel for respondents-claimants has not disputed the law as settled by Hon'ble Apex Court in case of *National Insurance Company Limited Vs. Pranay Sethi and others (supra)*, as per which addition in the income of the deceased towards loss of future prospects is to be restricted to 40% and the compensation under the conventional heads as ₹70,000/-, as such, compensation awardable to the claimants is reassessed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased	₹8000 per month
(ii)	40% of above (i) to be added as future prospects	(₹8000+₹3200)= ₹11200 per month
(iii)	Deduction of 1/4 th towards personal expenses of the deceased	(₹11200-₹2800)= ₹8400 per month
(iv)	Compensation after multiplier of 16 is applied	(₹8400X12X16)= ₹1612800
(v)	Loss of consortium	₹40000
(vi)	Loss of estate	₹15000
(vii)	Funeral expenses	₹15000
<i>Total</i>		₹16,82,800/-

Learned counsel for the appellant has argued that the tribunal, without any evidence on record, has concluded that the accident was caused due to rash and negligent driving of the offending vehicle by its driver, respondent No.7. There is no eyewitness of the occurrence. The mere fact that police has presented the challan against the driver is no reason to presume that the accident was caused due to his rash and negligent driving of the offending vehicles

the tribunal has not based its conclusion that the accident was caused due to rash and negligent driving of the offending vehicle by its driver, solely on the factum of presentation of challan by the police, though it was a very material fact before the tribunal while arriving at the conclusion as to how the accident took place. The claimants have also examined Satish PW1, who has deposed about the accident and confession by respondent No.7 before him about the accident. He is not a person, who is related to the deceased and his testimony was found to be reliable and believable by the tribunal. The driver and owner of the offending vehicle was not examined by the appellant to rebut the statement of PW1 Satish, as such, the tribunal has committed no error while concluding that the accident was caused due to rash and negligent driving of the offending vehicle by its driver.

The question, which arise for consideration is as to whether findings of the tribunal that the accident was caused due to rash and negligent driving of the offending vehicle by its driver, are sustainable? Admittedly, no eyewitness of the occurrence has been examined. Satish Kumar PW1 has stated that on the day of accident, he was coming in his TATA-Ace From Jui to Bhiwani. He saw a 'Haiwa Dumper' coming from Jui to Bhiwani at a very high speed being driven by its driver in a very rash and negligent manner. He saved himself from the said Haiwa dumper and on reaching village Golgarh, he found that a person was lying dead near the tyre of tractor-trolley. 4-5 persons, who have assembled there, told that deceased belong to village Maikhurd and a 'Haiwa dumper' has caused the accident. On 02.12.2014, he had gone to Tosham in connection with some personal work and was taking tea at Jhabru Hotel, where respondent No.7

came along with his 'Haiwa dumper'. He (PW1 Satish) knew respondent No.7 as he had earlier worked with him (respondent No.7). During talks, respondent No.7 disclosed that his dumper met with an accident with a tractor in the month of May when he was going to Golgarh from Jui but no case was registered against him. At that time, some more drivers were also present there. He thereafter met father of deceased Jaipal and told him about the particulars of respondent No.1. Police has also recorded his statement.

This witness has not seen the accident but reached the spot immediately thereafter. He had given the registration number of the dumper. He was helper with respondent No.7 on the 'Haiwa dumper' about 4-5 years ago. Testimony of this witness coupled with the fact that police during investigation has also found respondent No.7 as guilty, was sufficient for the tribunal to draw the conclusion that the accident in question was caused due to rash and negligent driving of the offending vehicle by its driver. The mere fact that PW1 had not informed the police after the accident or had gone to the house of claimant immediately thereafter, is no reason to disbelieve his statement as he was not related to the deceased. The tribunal has committed no error of law and fact while relying on the statement of PW1 Satish and other circumstantial evidence while concluding that the accident was caused due to rash and negligent driving of the offending vehicle by its driver-respondent No.7. I find no merits in the second contention put forth by learned counsel for the appellant and the same is rejected.

As a sequel of my above discussion, this appeal is partly

accepted to the extent that the amount of compensation as awarded by the tribunal is reduced from ₹17,80,200/- to ₹16,82,800/-. The liability to pay the compensation amount and its disbursement between the claimants shall be as per the award. The appellant-insurance company is entitled to recover the excess amount, if already paid, from the claimants. Keeping in view facts and circumstances of the case, parties are left to bear their own costs.

January 30, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No