

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

**FAO No.5924 of 2015 (O&M)
Date of decision: 19.11.2019**

Reliance General Insurance Company Limited

....Appellants

Versus

Neelam and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Bashamboo, Advocate,
for the appellant.

Mr. Arun Singal, Advocate,
for respondent Nos.1 to 5-claimants.

RITU BAHRI J. (Oral)

CM Nos.18621-18622-CII of 2015

For the reasons mentioned in the applications, same are allowed and delay of 53 days in filing and 17 days in re-filing of the appeal is condoned.

FAO No.5924 of 2015 (O&M)

Reliance General Insurance Company Limited-appellant has filed this appeal against the awarded dated 10.02.2015 passed by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.12,34,000/- has been awarded in favour of claimant-respondent Nos.1 to 5 on account of death of Sant Ram in a motor vehicular accident which took place on 26.05.2012.

A.M., Sant Ram (since deceased) was going from his house towards Panipat on a motorcycle bearing No. HR-42-A-2905. His brother Sukhbir along with his friend Dalbir was coming to Samalkha on his motorcycle No. HR-42-2654. At about 01.15 P.M., when they were crossing the Samalkha over-bridge, a truck bearing registration No.HR-46-C-0706 being driven by Krishan Lal-respondent No.1 in a rash and negligent manner, was going ahead of the motorcycle of Sant Ram and all of a sudden, its driver applied brakes, as a result of which, motorcycle of Sant Ram struck against the said truck and fell down near the office of BDPO, Samalkha. In this accident, Sant Ram received multiple serious and grievous injuries. Sant Ram was shifted to General Hospital, Panipat, where he was declared dead. With regard to the incident, an FIR No. 374 dated 26.05.2012, under Sections 279/304-A IPC was registered at Police Station, Samalkha. Consequently, claimant-respondent Nos.1 to 5 filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver, which resulted into the death of Sant Ram. This finding was rightly given on the basis of deposition of Sukhbir Singh (PW-2), who was eye witnesses of the accident. Apart from this, claimants have also proved on record documents Ex.P1 to Ex.P6 and Mark-PA.

In the absence of any documentary proof, income of the deceased was assessed as Rs.8000/- per month (as per DC rate), out of which, one-fourth ($1/4^{\text{th}}$) amount was deducted towards his personal expenses. By doing so, remaining income of deceased came to Rs.6000/- per month. The deceased was 28 years of age at the time of death/accident.

Accordingly, multiplier of 17 was applied. After applying the multiplier of 17, dependency of claimants came to Rs.12,24,000/- (6000/- x 12 x 17). In addition to it, Rs.10,000/- were awarded on account of funeral expenses. Hence, the claimants (respondent Nos1 to 5) were found entitled to total compensation of Rs.12,34,000/- along with interest @ 9% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the Insurance Company-appellant has preferred the present appeal.

The Insurance Company is challenging the finding given by Tribunal on issue No.1 on the ground that it was a case of contributing negligence and the driver of offending truck was not liable for the accident.

Learned counsel for the Insurance Company stated that the eye witness namely Sukhbir Singh (PW-2) had deposed that when Sant Ram was driving the motorcycle bearing registration No. HR-42-A-2905, all of a sudden the truck, which was going ahead of the motorcycle, applied brakes and with the result, motorcycle of Sant Ram struck against the back of the truck. Due to this impact, Sant Ram fell down and received multiple grievous injuries. Learned counsel for the appellant while referring to the cross-examination of Sukhbir Singh (PW-2), contends that this witness had admitted that speed of the motorcycle was approximately 60 KMPH and the speed of offending truck was 90 to 100 KMPH. Hence, in this backdrop, motorcycle was also negligent as the distance between the two vehicles was not enough. Both the vehicles were going at a different speed. He further argued that had the motorcycle been at a safe distance from the truck, the accident would not have taken place if, motorcyclist had applied brakes in time as well. Learned counsel for the appellant, while referring to the cross-

examination of Sukhbir Singh (PW-2), has argued that the speed of the motorcycle was alleged to be at 60 KMPH and that of the offending truck was about 90 to 100 KMPH and in this backdrop, even if the truck driver had applied sudden brakes, the deceased could have applied the brakes of the motorcycle well in time to avoid the accident.

Sukhbir Singh (PW-2), during his cross-examination, stated that the truck was coming from behind and was on the right side of the motorcycle. The said truck was loaded with LPG cylinders of Bharat Company. When the truck was overtaking their motorcycle as well as the motorcycle of the deceased, it was being driven in a zig-zag manner and rear portion of the truck was struck with the motorcycle of his deceased brother (Sant Ram).

This witness had specifically stated that the offending truck was loaded with LPG cylinders of Bharat Company and was being driven in a zig-zag manner. At the time of overtaking the motorcycle, rear portion of the truck struck against the motorcycle of the deceased, as a result of which, deceased-Sant Ram fell down on the metaled road. The accident took place when both the vehicles i.e. truck and the motorcycle were in running position. The police came after about 5-7 minutes of the accident. Cross-examination of Sukhbir Singh (PW-2) clarified that the motorcycle(s) were being overtaken by the offending truck and while doing so, backside of the truck had hit the motorcycle of Sant Ram (deceased).

The inference, which can be drawn from the cross-examination of Sukhbir Singh, eye witness (PW-2), at best, can be that after overtaking the motorcycle at the speed of 90-100 KMPH, backside of the offending truck had struck into the motorcycle. Due to this reason, the speed of the

truck was not reduced. Hence, the negligence of the truck driver (Krishan Lal) has been rightly proved. In this manner, there was no negligence on the part of the motorcyclist.

In view of the above discussion, this Court is of the considered view that finding on issue No.1 has been rightly given by the Tribunal and no ground is made out to interfere therein. The evidence has been appreciated in the right perspective.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

19.11.2019
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No