

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

FAO-1430-2017(O&M)

Date of decision:-27.9.2019

Oriental Insurance Company Ltd.

...Appellant

Versus

Smt.Chandrika and others

...Respondents

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

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

Mr.Gaurav Gaur, Advocate
for respondents No.1 to 3.

H.S. MADAAN, J.

Briefly stated, the facts of the case, as per version of the petitioners/claimants are that on 6.10.2015 at about 9:00 p.m., deceased Ramjeet Yadav was riding motorcycle bearing registration No.HR-03K-4091 for going from his house at Sector 26, Panchkula to District Courts, Panchkula to attend to his duty; when he reached near wine shop, Sector 21, Panchkula, where the road was under repair and there was one way traffic, then a motorcycle bearing registration No.HR03-P-5772 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Tajinder Singh in a rash and negligent manner came from the side of Tau Devi Lal Stadium and hit against the motorcycle of deceased, as result of which, the deceased fell down and received multiple injuries including injuries on head; after the accident respondent No.1 –

Tajinder Singh ran away from the spot; Ramjeet Yadav, who was in injured condition was removed to General Hospital, Sector 6, Panchkula by some passerby and brother of deceased and from where, keeping in view his serious condition, he was referred to PGI, Chandigarh and he remained admitted at PGI, Chandigarh from 6.10.2015 to 11.11.2015; FIR No.396 dated 4.11.2015 for the offences under Sections 279, 304-A IPC was registered with Police Station Sector 5, Panchkula against respondent No.1 - Tajinder Singh.

The legal representatives of such deceased, namely, his wife – Smt.Chandrika, aged about 40 years, minor son – Master Amar aged about 11 years, minor daughter – Ms.Khushboo aged about 16 years and son - Sonu, aged about 19 years had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Tajinder Singh – driver, Gurpreet – owner and Oriental Insurance Company – insurer of the offending vehicle, claiming compensation to the tune of Rs.50 lakhs.

According to the claimants, the deceased was aged about 41 years and working as Watchman with District Bar Association, Panchkula and in addition to that he was working as a Munshi with an Advocate there and he used to earn Rs.10,000/- per month by working as Watchman and Rs.15,000/- per month as Munshi, his total income being Rs.25,000/- per month. They further stated that they had spent Rs.1,50,000/- on medical treatment of the deceased before his death and Rs.30,000/- on performing his last rites.

On notice, all the three respondents appeared. Respondents

No.1 and 2 had filed a joint written statement, whereas respondent No.3 came up with a separate written statement.

In the joint written statement filed on behalf of respondents No.1 and 2, they stated that no accident had taken place with the offending vehicle and a false case has been registered against respondent No.1 just to get compensation. Refuting the remaining assertions in the claim petition, such respondents prayed for dismissal of the claim petition.

Respondent No.3 insurance company in the separate written statement filed by it had raised various legal objections and took statutory defences contending that respondent No.1 was not having a valid and effective licence at the time of accident and the offending vehicle was being driven in violation of the terms and conditions of the insurance policy. Such respondent also denied the involvement of the motorcycle in the accident. It prayed for dismissal of the claim petition.

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

After hearing arguments, the Motor Accidents Claims Tribunal, Panchkula (hereinafter referred to as the Tribunal) while allowing the claim petition vide award dated 23.11.2016, awarded a compensation of Rs.24,69,321/- with interest at the rate of 7% per annum from the date of filing of the claim petition till realization to the claimants payable by all the respondents jointly and severally and the apportionment and mode of payment are detailed in the award itself.

This award left the respondent No.3 - insurance company aggrieved and it has approached this Court by way of filing the present

appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimants.

Notice of the appeal was given to the respondents and respondents No.1 to 3 have put in appearance through counsel

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 has been that the motorcycle No.HR03-P-5772 was not involved in the accident and it has been planted by the claimants in connivance with the local police just to get compensation. He further contended that the presence at the spot of Ravinder Kumar, who is brother of the deceased and is sole eye-witness is doubtful keeping in view the answers given by him in his cross-examination; that as a matter of fact he was not present at the spot at the time of accident; there was gross delay of about one month in lodging of FIR in which name of the driver of motorcycle is not mentioned; the offending vehicle was recovered on 4.11.2015 only i.e. almost after a month and furthermore respondent No.1 – driver has been acquitted of the charge by the Judicial Magistrate Ist Class, Panchkula vide his judgment dated 11.6.2018, therefore, the award be set aside. In support of his contentions he has referred to judgments **Kamlesh & Ors. Versus Attar Singh and Ors. 2016(1) RCR(Civil)24** , **Rudhar Mani and another Versus Kulvir Singh and others, 2016(2) Law Herald 1446** and judgment passed on 15.11.2018 in FAO No.1720-2007 titled **Veena & others**

Versus Ran Lal and others by a Co-ordinate Bench of this Court.

Whereas, these submissions have been vehemently contested by learned counsel for the claimants stating that the Tribunal was fully justified in returning a finding that respondent No.1 – Tajinder Singh had caused the accident by his rash and negligent driving of the offending motorcycle in which Ramjeet Yadav had suffered injuries, to which he had succumbed and no fault can be found with such finding.

After hearing learned counsel for the parties and going through the record, as well as the judgments referred to by learned counsel for the insurance company, I find little merit in the submissions made by learned counsel for the insurance company.

The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature, the yardstick to be used is preponderance of probabilities.

Furthermore, Section 166 of the Motor Vehicles 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.

I find the presence at the spot of PW3 Ravinder Kumar to be

natural and probable and account given by him to be worthy of reliance. No previous enmity between him and respondent No.1 has been alleged or proved prompted by which he might have involved him in this case wrongly while trying to shield the actual culprit. In a normal circumstance this witness would not have substituted the real culprit with an innocent person since it is always the earnest endeavour of a close relative to ensure that the person responsible for death of his near and dear is brought to book and is punished suitably rather than attempting to shield the actual culprit and involve some innocent person in his place without any rhyme or reason.

Respondent No.1 might have been acquitted by the trial Court but the fact remains that he was booked for causing death of deceased in the motor vehicular accident by his rash and negligent driving of the offending motorcycle. The investigating agency had found evidence against him, for that reason he was sent up to face trial, formal charge had been framed against him, the prosecution had adduced evidence and on completion of trial, he was acquitted. However, that judgment is always subject to appeal. Nevertheless the judgment of a criminal Court is not binding upon the Civil Court or Tribunal under motor vehicular accident. The Tribunal has to reach its own conclusion on the basis of evidence adduced before it, therefore such contentions put forward by learned counsel for the appellant – insurance company do not result in finding fault with verdict given by the Tribunal in the impugned award.

Though learned counsel for the appellant – insurance company has tried to make out a case of contributory negligence stating

that the accident took place on a road, which was converted into two way traffic road since the road next to it was under construction. However, I do not find any force in that contention. All the three respondents have altogether denied the involvement of the offending motorcycle driven by respondent No.1 in the accident. They have not taken up a plea that though the accident had taken place but it was on account of faulty driving of his motorcycle by the deceased. The respondents had not led any evidence in that regard. Respondent No.1 did not step into the witness-box to depose on oath that the accident had not taken place on account of any rash or negligent act on his part or rather the deceased was responsible for the same since he was guilty of want of care and caution while driving his motorcycle. Therefore, this plea of learned counsel for the insurance company is rejected.

As regards the next argument advanced by learned counsel for the insurance company with regard to quantum of compensation awarded by the Tribunal, of course that has got element of merit. The Tribunal has accepted the version of the claimants that deceased was working as a Watchman with District Court Bar Association, Panchkula getting salary of Rs.6,500/- per month besides working as Munshi with PW5 Dinesh Mehta, Advocate for half day getting Rs.5,000/- per month as salary from him. The Tribunal ignored the fact that a person cannot work round the clock, at night time as a Watchman and during day time as a Munshi. A human being does require sleep and rest and it cannot work like a machine. On the basis of evidence adduced, the Tribunal was justified in taking the monthly income of the deceased to be Rs.6,500/-

per month by working as Watchman with District Bar Association, Panchkula. However, it was not so with regard to the deceased earning Rs.5,000/- per month by working as Munshi for half day with PW5 Sh.Dinesh Mehta, Advocate. Thus, monthly income of the deceased is taken to be Rs.6,500/-.

The Tribunal has taken the age of deceased to be 40 years and added 50% of the income towards future prospects. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, keeping in view the age of deceased to be 40 years, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.6,500} + 2,600 = \text{Rs.9,100/-}$.

In this case the Tribunal has rightly deducted $\frac{1}{4}^{\text{th}}$ of the amount towards self expenses in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**. Doing that the dependency of claimants comes out to Rs.6,825/- per month, annual dependency comes out to $\text{Rs.6,825} \times 12 = \text{Rs.81,900/-}$.

The Tribunal has used multiplier of 15, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to $\text{Rs.81,900} \times 15 = 12,28,500/-$.

The Tribunal has further awarded a sum of Rs.35,000/- to claimant No.1 in lump sum towards funeral expenses, transportation of dead body and last rites, Rs.10,000/- to her towards loss of consortium and Rs.30,000/- to claimants No.2 to 4 towards loss of care and guidance.

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 compensation comes out to Rs. 12,28,500 + 70,000 = 12,98,500/-.

The Tribunal has rightly awarded a sum of Rs.65,571/- to the claimants towards medical treatment of deceased before his death, which is just and adequate and does not call for any interference. Adding that amount, the total compensation comes out to Rs.13,64,071/-(12,98,500 + 65,571).

The Tribunal has wrongly awarded compensation of Rs.24,69,321/-. The same is reduced to Rs.13,64,071/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.13,64,071 /-. Other terms and conditions in the original award shall remain the same. The excess amount if received by claimants be returned by them otherwise the appellant – insurance company shall be entitled to recover it by filing an execution application before the Tribunal.

With such modification, the appeal is allowed partly with costs.

27.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No