

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

FAO-4013-2018(O&M)

Date of decision:-27.11.2019

United India Insurance Company Ltd.

...Appellant

Versus

Gurcharan Singh and others

...Respondents

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

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

Mr.H.S. Brar, Advocate
for respondents No.1 to 3.

Mr.B.S. Ichhewal, Advocate
for respondents No.4 and 5.

H.S. MADAAN, J.

On account of death of Ranjit Singh son of Gurcharan Singh in a motor vehicular accident, his parents i.e. his father - Sh.Gurcharan Singh and mother – Smt.Harbans Kaur besides wife Smt.Gurwinder Kaur had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Gurpreet Singh – driver, United India Insurance Company – insurer and Gurdarshan Singh – owner of the car make i-20 bearing registration No.PB-11AW-3345 (hereinafter referred to as the offending car), claiming compensation to the tune of Rs.70 lakhs with interest and cost.

As per version of the claimants on 9.1.2016 at about 1:15 p.m. Ranjit Singh deceased was going from village Mandour to Patiala in connection with some domestic work driving motorcycle make Bullet having registration No.PB-11AX-4147; when he had reached near bus stand of village Rakhra at Nabha-Patiala road and was about to turn his motorcycle, then the offending car being driven by respondent No1 – Gurpreet Singh in a rash and negligent manner came from Patiala side and hit into the motorcycle, resultantly Ranjit Singh suffered multiple grievous injuries; he was rushed to Rajindra Hospital, Patiala from where he was taken to Amar Hospital, Patiala, however he succumbed to the injuries suffered by him in the road side accident. Statement of Ranjit Singh had been recorded when he was not conscious. The family members of the deceased had made several rounds of concerned police authorities to initiate proceedings against the driver of the offending car but to no effect. The complainant had also submitted a representation before SSP, Patiala but no action was taken; therefore the wife of the deceased had filed a private complaint under Sections 279, 337, 338 and 304-A IPC in the Court of competent jurisdiction. The postmortem examination on the dead body of the deceased Ranjit Singh was got conducted. The matter had been reported to the police and DDR No.15 dated 9.1.2006 was entered on the basis thereof.

According to the claimants, deceased Ranjit Singh was serving as a Constable, getting salary of Rs.70,000/- per month; he was aged about 42 years and was the only earning member in the family.

On being put to notice, all the three respondents appeared.

Respondents No.1 and 3 had filed a joint written statement contesting the claim petition, whereas respondent No.2 came up with a separate written statement.

In the written statement filed by the former, they have taken up various legal objections, to wit, that the petition was not maintainable and the claimants have concealed true and material facts from the Court. On merits, it was contended that respondent No.1 was not at fault and the accident had not taken place due to his negligence.

In the separate written statement filed on behalf of respondent No.2 – insurance company, it has raised various legal objections including maintainability of the claim petition and took statutory defences including one that the driver of the offending car in question was not holding a valid and effective driving licence at the time of accident. On merits, such respondent denied the assertions in the claim petition.

In the end, all the respondents prayed for dismissal of the claim petition.

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

On conclusion of trial, after hearing arguments vide Award dated 8.5.2018, learned Motor Accidents Claims Tribunal, Patiala(hereinafter referred to as the Tribunal) allowed the claim petition partly and awarded compensation of Rs.39,97,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization to the claimants payable by all the respondents jointly and severally. The claimant No.3 being wife was held entitled to Rs.24,97,000/- and

claimants No.1 and 2 being parents were held entitled to Rs.7,50,000/- each.

Being aggrieved by the said award, respondent No.2 – insurance company has approached this Court by way of filing an appeal, notice of which was given to the respondents, who have put in appearance through counsel.

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

The main contention of learned counsel for the appellant has been that no FIR was lodged with regard to the accident. He has further contended that RW2 HC Harvinder Singh, who had gone to Amar Hospital had obtained a certificate of fitness from the attending doctor and then recorded statement of Ranjit Singh as Ex.RW1/1. The deceased had stated that nobody was at fault in happening of the accident. Therefore, no FIR was recorded. As such the claimants are not entitled to get any compensation on account of death of Ranjit Singh and the claim petition was wrongly accepted by Motor Accidents Claims Tribunal, Patiala.

Whereas counsel for the claimants has contended that the accident had taken place due to rash and negligent driving of the offending car by respondent No.1 – Gurpreet Singh; though police had not taken any action against him by lodging FIR but then wife of the deceased had filed a private complaint in the Court in that regard. Therefore, the claim petition was rightly accepted by the Motor Accidents Claims Tribunal, Patiala.

I find that in this case merely because no formal FIR was

recorded is no ground to presume that nobody was at fault in happening of the accident. 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. The Tribunal has to reach its own conclusion on the basis of evidence adduced before it and judgment of the criminal Court is not binding upon the Tribunal under the Motor Vehicles Act.

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. The Tribunal in this case has obviously done so, which has resulted in miscarriage of justice.

In this case PW1 Smt.Gurvinder Kaur wife of the deceased through her affidavit Ex.PA had provided the eye-witness account of the incident stating that her husband Ranjit Singh was serving as Constable in Punjab Police, who was pensioner from Indian Army. While giving the details of the accident, she categorically stated that the same had taken place due to rash and negligent driving of the offending car by Gurpreet Singh – respondent No.1 in a rash and negligent manner and it while

coming from Patiala side had hit the motorcycle, resultantly Ranjit Singh suffered multiple injuries; though he was hospitalized but he succumbed to the injuries; when the police did not take any action, the family members of the deceased made representation before SSP, Patiala.

The presence at the spot of Gurvinder Kaur comes out to be natural and plausible. Therefore, the claimants had successfully established that respondent No.1 was author of the accident by his rash and driving of the offending car in which deceased had suffered injuries to which he had succumbed. Any alleged statement made by the deceased while in trauma due to injuries suffered by him in the road side accident giving clean chit to respondent No.1 does not make much difference. The Tribunal is to arrive at its conclusion on the basis of evidence adduced by the parties and the Tribunal by proper appreciation of evidence and correct interpretation of law has rightly concluded that the accident had taken place due to rash and negligent driving of respondent No.1. That conclusion drawn is correct and I do not see any reason to differ with the same. The DDR recorded by the police does not come in the way of the claimants establishing their claim before the Tribunal that the accident had taken place due to rash and negligent driving of the car by respondent No.1. I find that the presence at the spot of wife of deceased stands established.

As regards the quantum of compensation awarded, I do not find anything wrong with it since while quantifying the compensation, the Tribunal has taken into consideration his pay slip of the deceased showing that he was getting salary to the tune of Rs.40,200/- and after saving he

was contributing Rs.33,368/- to his family. The salary has been rounded off to Rs.40,000/-. 30% of the amount was deducted therefrom towards income tax and amount of contribution worked out to Rs.28,000/-. Keeping in view the number of dependent family members being three, 1/3rd of the amount was deducted towards personal expenses leaving the dependency of the claimants to be Rs.18,667/-. Considering the age of the deceased as 42 years, 25% of the amount has been added towards future prospects. Multiplier of 14 was applied and compensation worked out to Rs.39,27,000/-. Rs.70,000/- has been awarded under the conventional heads and the total amount of compensation calculated as Rs.39,97,000/-.

No fault can be found with the impugned Award. The vehicle in question was duly insured with the appellant – insurance company at the relevant time. No violation of any terms and conditions of the insurance policy could be shown, which might have absolved the respondent – insurance company to pay compensation. Therefore, the driver, owner and insurer of the offending vehicle were rightly held to be jointly and severally liable to pay compensation to the claimants, who are legal representatives/legal heirs of the deceased.

Finding no merit in the appeal, the same stands dismissed.

27.11.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No