

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

F.A.O. No. 5888 of 2018(O&M)

Date of Decision: 29.01.2019

Oriental Insurance Company Limited

.....Appellant.

Versus

Kalasho Devi and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Satpal Dhamija, Advocate
for the applicant-appellant.

LISA GILL, J (Oral).

This appeal has been filed by the Insurance Company challenging award dated 20.01.2018, passed by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'Tribunal'), to the extent of the finding of the learned tribunal that the accident in question has been caused due to the rash and negligent driving of the offending Tata Safari car bearing registration no. HR-02-V-8625 by its driver-respondent no.1.

There is no challenge to the quantum of compensation.

As per averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'Act'), Balinder (deceased), Rajni, his wife and Manu (wife of his brother) along with her daughter aged about 1 ½ years, who was sitting in her lap were returning to their village on 07.11.2016 after visiting his in-laws on a motorcycle being driven by Balinder (deceased). At about 6.30-6.45.p.m., when they crossed village Fatehgarh and proceeded towards Nathanpur, the child wanted to answer the call of nature. On the asking of Manu, Balinder stopped the motorcycle by the side of the road. Manu and Rajni were busy in taking care of the child while Balinder

remained seated on the stationary motorcycle. In the meantime, a Tata Safari car bearing registration no. HR-02-V-8625, being driven by respondent no.1 in a rash and negligent manner, came from the side of village Nathanpur and struck against the motorcycle as well as Balinder. As a result thereof, Balinder sustained multiple and grievous injuries. The injured-Balinder was immediately evacuated to Civil Hospital, Yamuna Nagar. Due to the serious condition of the injured, he was referred to PGI Chandigarh, Balinder was taken to GMCH, Sector-32-Chandigarh. Pardeep Kumar-PW-2 accompanied him and attended to him. However, injured succumbed to the injuries on the night of 08.11.2016. Autopsy on his dead body was conducted on 09.11.2016 at Chandigarh. FIR No.102 dated 09.11.2016, under Sections 279, 304-A IPC, Police Station Buria, was registered against respondent no.1-Naresh, in this respect.

Petition under Section 166 of the Motor Vehicles Act was filed by all the claimant-respondents no.1 to 4 seeking compensation on account of the death of Balinder.

Respondents no.1 and 2 filed joint written statements denying the claim set up by the claimants.

Respondent no.3-Insurance Company (appellant in this case), filed a written statement raising various preliminary objections and denying the averments on merits. Respondents prayed for dismissal of the petition.

Replication was not filed. Following issues were framed by the learned tribunal:-

1. Whether the accident in question resulting into death of Balinder took place due to rash and negligent driving of Tata Pick-up bearing registration No. HR-02-V-8625 by respondent no.1?OPP

2. If issue no.1 is proved in affirmative, to what amount of compensation the petitioners are entitled to and from whom?OPP
3. Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance policy. If so, to what effect?OPR-3.
4. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned Tribunal on consideration of the evidence on record, facts and circumstances of the case concluded that the claimants successfully proved that the accident in question was caused due to the rash and negligent driving of the offending vehicle by its driver-respondent no.1. Learned tribunal awarded a total sum of ₹18,28,000/- to claimant-respondents no.1 to 4 as compensation alongwith interest at the rate of 8% per annum from the date of filing of the petition till the date of realization.

Aggrieved therefrom, present appeal has been filed by the Insurance Company.

Learned counsel for the appellant-Insurance Company vehemently argues that the evidence on record does not indicate the involvement of the offending vehicle in the accident in which Balinder (deceased) lost his life. It is submitted that the FIR in this case was lodged on 09.11.2016 though the accident in question is stated to have taken place on 07.11.2016 at about 6.30.-45.p.m. Claimant-PW-1-Rajni i.e. widow of the deceased surprisingly did not even accompany her husband to the hospital though she claimed to be present at the time of the accident. It is opposed to all probabilities that she, nor her sister-in-law (Devrani) accompanied Balinder to the hospital. If they had been present at the spot,

they would have gone to the hospital. PW-2-Pardeep Kumar, brother of the deceased is admittedly not an eye witness of the accident in question. Therefore, involvement of the vehicle in question is not proved in any manner. It is thus prayed that this appeal be allowed and the claim petition filed by the claimant-respondents be dismissed.

I have heard learned counsel for the appellant and have gone through the certified copies of the evidence and record furnished in Court today by learned counsel for the appellant.

The accident in question took place on 07.11.2016 at about 6.30.-45.p.m. This fact is borne out from the evidence on record including the final report under Section 173 Cr.P.C., Ex.P-1. Immediately after the accident, the injured-Balinder was taken to Civil Hospital Yamuna Nagar from where he was referred to PGI, Chandigarh. He was taken to GMCH, Sector 32, Chandigarh. It is revealed that intimation regarding admission of the injured at GMCH, Sector-32, Chandigarh was received by the police on the night of 07.11.2016 itself. PW-2-Pardeep Kumar, brother of the deceased who had accompanied Balinder from Civil Hospital, Yamunanagar was admittedly attending to Balinder at GMCH, Sector-32, Chandigarh. Intimation regarding death of the injured was also received by the police on the night on 08.11.2016. Statement of Pardeep Kumar was recorded. Registration number of the offending vehicle or the name of the driver was not mentioned at that stage by Pardeep Kumar, but this by itself cannot detract from the claimant's case. This is so for the reason that the cause of not mentioning the details of the offending vehicle or the driver at the time of death of Balinder is duly explained. PW-2-Pardeep Kumar, in his

statement has clearly deposed that he received a phone call on 07.11.2016 at about 7.00.p.m. that his brother had met with an accident and was taken to Civil Hospital, Yamuna Nagar. He straightway went to Civil Hospital, Yamuna Nagar from where his brother was referred to the hospital at Chandigarh and taken to GMCH, Sector-32, Chandigarh. PW-2 accompanied Balinder (deceased) to Chandigarh where he ultimately succumbed to his injuries. It is stated that thereafter PW-2 got together with the family members and his sister-in-law i.e. wife of deceased besides Manu, who narrated the details of the accident. It is not opposed to all probabilities that the claimant-Rajni admittedly a rustic villager who is stated to have studied up to 8th standard would have been told to go home from the site of the accident along with her sister-in-law and the infant and the details of the accident were not immediately revealed to PW-2, who was admittedly accompanying his brother (deceased). It is natural and probable that PW-2 would have been busy looking after his brother and making attempts to save his brother's life at the relevant time. PW-1-Rajni Devi, has narrated the incident clearly as it unfolded. Merely, because she did not accompany the deceased to the hospital, cannot be a ground to non-suit the claimants especially keeping in view the ground realities of the area concerned.

I have gone through the testimonies of PW-1 and PW-2. There is indeed nothing on record to discard their testimonies being untrustworthy or unreliable. Respondent-driver admittedly did not even step in the witness box to negate the case of the claimants. There is no evidence on record to show any kind of collusion between the claimants, driver and owner of the offending vehicle. Recovery memo of both the vehicles is on record. It

cannot be said by any stretch of imagination that the offending vehicle was not involved in the accident. There is no merit in the argument that damage to the offending vehicle is not proved as mechanical inspection of the same was admittedly carried out after one month, during which it may have been repaired. The claimants in the present proceedings have to prove their case on the touchstone of preponderance of probabilities. In the present case, the claimants have successfully proved their case. It has been held by the Hon'ble Supreme Court in **Parmeshwari v. Amir Chand and others, 2011(2) RCR (Civil) 153** that in cases under this Act, it is the touchstone of preponderance of probabilities on which the case of the claimants has to be tested. There should not be insistence on proof beyond reasonable doubt as in criminal cases.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 20.01.2018 passed by the learned tribunal, Yamuna Nagar at Jagadhri, which calls for interference by this Court at the instance of the appellant-Insurance Company.

There is a delay of 114 days in re-filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in re-filing this appeal has been rendered academic. Application is accordingly disposed of.

Appeal is accordingly dismissed with no order as to costs.

29.01.2019
s.khan

[LISA GILL]
Judge

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