

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

FAO-6153-2013(O&M)

Date of decision:-19.12.2019

United India Insurance Co. Ltd.

...Appellant

Versus

Smt.Nirmla and others

...Respondents

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

Present: Mr.Pardeep Goyal, Advocate
for the appellant.

H.S. MADAAN, J.

CM-25316-CII-2013

Heard.

For the reasons mentioned in the application, the same is
allowed and delay of 23 days in filing of the appeal stands condoned.

FAO-6153-2013(O&M)

Briefly stated, facts of the case are that petitioners/claimants
Smt.Nirmla – widow, Sandeep – son and Umrawati – mother of Sh.Dalip
Singh, an unfortunate victim of a road side accident had brought a claim
petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter
referred to as the Act) against the respondents i.e. S.Ravindra Babu –
owner and United India Insurance Company – insurer of Tipper No.AP
28X2959 (hereinafter referred to as offending vehicle) as well as Oriental

Insurance Company Ltd., Charkhi Dadri, District Bhiwani – insurer of truck bearing registration No.HR-66A/2784 (hereinafter referred to as ill-fated truck), claiming compensation to the tune of Rs.15 lakhs with interest.

As per the version of the petitioners/claimants, Dalip Singh deceased was owner-cum-driver of ill-fated truck; on 19.6.2008 Dalip Singh along with Vijay Singh son of Puran Singh, resident of village Chokipura (UP) working as a cleaner on the ill-fated truck started journey from State of Rajasthan for going to Rajahmundri (Andhara Pardesh) for transporting the marble stones; on 26.6.2008 while the truck being driven by Dalip Singh was passing through an area within jurisdiction of Police Station Nizamabad (Andhara Pardesh) and time was around 1:30 a.m. early morning hours and in the area of village Galipur, the offending vehicle being driven by its driver – Shaik Imambaba at a very high speed and in a rash and negligent manner came from opposite direction and hit against the right side of the ill-fated truck, due to which Dalip Singh sustained fatal injuries and died on the way while being taken to Community Hospital, Baswada; formal FIR No.75 dated 26.6.2008 for the offences under Sections 304-A/337 IPC regarding the accident was registered with Police Station Nizam Sagar, District Nizamabad.

According to the petitioners/claimants, deceased Dalip Singh was aged about 40 years and he was earning Rs.15,000/- per month by working as a transport operator and truck driver and the petitioners claimants were fully dependent upon his earnings. They prayed that their claim petition be accepted.

On being put to notice, respondent No.1 had not appeared despite service and as such he was proceeded against ex-parte vide order dated 20.4.2012. Respondents No.2 and 3 had appeared and filed separate written statements contesting the claim petition.

In the written statement filed by respondent No.2, it raised preliminary objections that the petition was bad for mis-joinder and non-joinder of necessary parties since the driver of the alleged offending vehicle was not impleaded as a respondent, though he was a necessary party for disposal of the claim petition; that driver of the offending vehicle was not holding a valid and effective driving licence to drive the same at the time of accident; that respondent No.1 had violated the terms and conditions of the insurance policy, therefore insurance company was not liable to pay compensation to the petitioners/claimants. On merits, such respondent denied the assertions in the claim petition praying for its dismissal.

In the written statement submitted by respondent No.3 – insurance company of ill-fated truck, it pleaded that since accident in question took place due to negligence of driver of tipper, which was insured with respondent No.2, the claim petition is not maintainable against the answering respondent No.3.

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

After hearing arguments, the Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as the Tribunal), decided issue No.1 in favour of the petitioners/claimants. Issue No.2 was partly decided

in favour of the petitioners observing that petitioners were entitled to get compensation of Rs.9,81,000/- from respondents No.1 and 2 only. Issues No.3 and 4 were decided being not pressed by learned counsel for respondents No.2 and 3 during the course of arguments and no evidence being there to prove such issues. Those issues were decided against respondents No.2 and 3. As a result of findings on all the issues, the Tribunal accepted the claim petition vide award dated 17.8.2013 and awarded compensation of Rs.9,81,000/- with interest at the rate of 6% per annum from the date of filing of the petition till the realization of the amount, payable by respondents No.1 and 2 jointly and severally. The claim petition qua respondent No.3 was dismissed. It was directed that out of the amount of compensation, petitioner No.1 would be entitled to get 50% share, whereas petitioners No.2 and 3 would get 25% share each and further that 50% share of each petitioner would be deposited in fixed deposit for a period of three years.

This award left respondent No.2 - 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 claimant.

Notice of the appeal was given to respondents but there is no representation on their behalf.

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

The first and foremost argument advanced by learned counsel

for the appellant was that since it was a case of head on collision showing that the drivers of both the vehicles were at fault, in that way, it was a clear case of contributory negligence; that the deceased was also at fault in happening of the accident, therefore the compensation amount, if at all to be awarded should have been apportioned among the drivers, owners and insurance companies of both the vehicles and the Tribunal fell in error in making the owner as well as insurance company of the tipper jointly and severally liable, whereas giving a clean chit to insurance company, of the truck, which was being owned and driven by the deceased himself.

However, I do not find myself in agreement with the learned counsel for the appellant on that point. Merely for the reason that the two vehicles were involved in a head on collision does not mean that it was a case of contributory negligence. For determining contributory negligence, various factors are to be taken into consideration, like width of the road, whether the traffic was going on one side of the road or on two sides; the amount of light available at the spot; the time of happening of the accident; whether the weather conditions were foggy or it was a clear sky; the glare of the headlights of the vehicles coming from the opposite side etc. The Tribunal by proper appraisal and appreciation of evidence has returned a finding that the accident had taken place on account of rash and negligent driving of tipper by its driver and incidentally drivers of both the vehicles i.e. of the tipper as well as the truck had perished in the accident. However, PW1 Billu, who was travelling the truck as a cleaner had categorically deposed that the accident in question had taken place due to negligence of driver of offending vehicle i.e. tipper and FIR copy

Ex.P1 had been registered against the driver of offending vehicle. The presence at the spot of Billu comes out to be natural and probable and there is no reason to doubt his deposition. Thus ocular evidence of the incident having been provided by PW1 Billu, which was in consonance of the case of the claimants coupled with that formal FIR Ex.P1 regarding the accident having been lodged against driver of the offending tipper, in absence of any evidence led by respondents in rebuttal clearly proved that the driver of the offending tipper was at fault in happening of the accident, which had occurred on account of his rashness and negligence, in the process truck being driven by Dalip Singh was hit and Dalip had suffered injuries to which he succumbed. In **Girdhari Lal Versus Radhey Shyam and others, 1994(1) ACJ 168**, it was observed that when a driver is tried on account of rash driving that leads to a prima facie conclusion that the accident occurred due to rash and negligent driving. Therefore, the Tribunal was justified in not taking it as a case of contributory negligence. This contention of learned counsel for the appellant is rejected.

Though learned counsel for the appellant has submitted that presence at the spot of PW1 Billu was doubtful since he was not conductor of truck being driven by Dalip Singh as he had not sustained any injury in the accident and had not lodged the FIR. His statement was also not recorded which goes to show that he was introduced subsequently and his testimony should not be believed.

However, I am not impressed by this contention. Merely because Billu did not receive any injury in the accident and had not reported the matter to the police, does not make his presence at the spot

doubtful as it has come in the testimony of Billu that the offending tipper had hit the ill-fated truck on the right side, in the process Dalip Singh had sustained fatal injuries and died. Normally a cleaner sit on the left side of the truck and it is quite possible that since that side of the truck was not directly hit, Billu escaped unhurt. Solely for the reason that he did not venture to report the matter to the police does not go to show that he was not present at the spot. If the police did not record his statement during investigation, that should be taken as a fault in the investigation. However, no question mark can be put on the credibility of Billu for the said reason. Going by same logic, if the FIR had been got recorded by Seikh Saadam, who was cleaner on the offending vehicle, the respondents could have examined him to show that how the accident had actually taken place but that was not so done.

Learned counsel for the appellant has further argued that the compensation awarded is on the higher side. However, I find little merit in this contention. The Tribunal had taken the monthly income of the deceased as Rs.8,000/- per month rejecting the contention of claimants that it was Rs.15,000/- per month. The deceased comes out to be owner as well as driver of a truck and his monthly income as Rs.8,000/- cannot be taken to be on higher side. The Tribunal has not added any amount towards future prospects. Had it been done, the compensation awarded would have been even higher. The deduction of 1/3rd towards personal expenses has rightly been made and multiplier of 14 has also been properly applied, while working out the total compensation of Rs.9,81,000/-. Rather the interest awarded @ 6% appears to be on

somewhat lower side. Therefore, it cannot be taken that the compensation awarded is inflated or on higher side.

Learned counsel for the appellant has further submitted that since respondent No.1, who was owner of the tipper had been proceeded against ex-parte, the insurance company could not prove any documents and it could not be found out as to whether the driver of offending tipper was having a valid and effective driving licence at the time of accident. Some reports from RTA, Medchal, Andhra Pradesh Transport Department have been attached with the grounds of appeal.

Again, I am not impressed by this contention. Once onus of proving a particular issue was placed upon the appellant – insurance company, it was duty bound to discharge that onus by producing evidence. It cannot take plea that since respondent No.1 had not appeared before the Tribunal and had been proceeded against ex-parte, it could not get relevant documents from such owner and prove those in evidence. The reports now sought to be produced cannot be read into evidence in such a manner without formal proof. The appellant – insurance company should have summoned such record during the trial before the Tribunal and got those documents proved by examining relevant witness, which it failed to do.

Therefore, finding no merits in the appeal, the same stands dismissed.

19.12.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No