

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

FAO-2950-2018(O&M)

Date of decision:-25.4.2019

The Oriental Insurance Company Ltd.

...Appellant

Versus

Tabsum and others

...Respondents

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

Argued by: Mr.R.C. Gupta, Advocate
for the appellant.

Respondents ex-parte.

H.S. MADAAN, J.

Smt.Tabsum aged about 23 years – wife, Baby Arshi aged about 6 years, Baby Samrin aged about 5 years, Baby Riya aged about 4 years and Baby Bushra aged about 3 years – minor daughters and Mrs.Hamidan aged about 55 years – mother of Shokeen, who lost his life in a motor vehicular accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Usman – driver, M/s Mapple Logistics Pvt. Ltd. through its Proprietor - owner and The Oriental Insurance Company Ltd. having its Branch at Sonipat – insurer of truck trailer having registration No.HR-38-R-9359 (hereinafter referred to as the offending vehicle) claiming compensation to the tune of Rs.70 lacs.

As per the case of the petitioners/claimants, on 22.1.2017

Shokeen son of Sh.Alisher(since deceased) along with another person by the name of Shokeen son of Sh.Sahidu was going to Kharkhoda for selling the clothes on their separate motorcycles; that deceased Shokeen was driving his motorcycle on the correct side of the road; that Shokeen son of Sh.Sahidu was following the said motorcycle on his separate motorcycle; that at about 12:00 O'clock when they had reached in front of Ranbhoomi Petrol Pump on Rohtak road in the area of village Jharoth, then the offending vehicle came from Sonipat side being driven by respondent No.1 – Usman at a very fast speed in A rash and negligent manner and hit against the motorcycle of Shokeen son of Alisher, with the result he fell down and tyre of the offending vehicle ran over him, resulting in his instant death; that formal FIR No.34 dated 22.1.2017 for the offences under Sections 279, 304-A IPC was registered with Police Station Kharkhoda, District Sonipat regarding the incident. According to the petitioners/claimants deceased Shokeen was a cloth merchant and he used to earn Rs.50,000/- per month from that business; that the claimants were fully dependent upon him for financial support; that as a result of death of Shokeen, they have lost the only earning member in the family.

On getting notice of the claim petition, all the respondents appeared and filed written statements contesting the claim petition. Issues on merits were framed. The parties were afforded opportunities to lead evidence. Thereafter, vide award dated 11.1.2018 while allowing the claim petition partly, the Tribunal granted compensation of Rs.22,12,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization, the liability of all the three respondents being joint

and several. The manner in which the compensation is to be apportioned was also given in the award.

Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

Notice of the appeal was issued to the respondents, who were served. However, there was no representation on their behalf, as such, they were proceeded against ex parte.

I have heard learned counsel for the appellant besides going through the record and I find that there is absolutely no merit in the appeal.

The first and foremost submission of learned counsel for the appellant was that though the claimants had failed to establish on record the income and avocation of the , even then the Tribunal had taken the income of the deceased to be Rs.10,000/- per month when the income should have been assessed on the basis of minimum wages payable to worker at the relevant time in view of judgment of the Apex Court i.e. **Govind Yadav Versus The New India Insurance Company Limited, 2011(4) RCR(Civil) 817.** According to the learned counsel for the appellant, the minimum wages for a worker in State of Haryana at the relevant time were Rs.9,300/- per month, therefore, the compensation so awarded be reduced.

However, this submission of learned counsel for the insurance company is devoid of any merit. It is consistent case of the claimants that the deceased was working as a cloth merchant. Though

they have given his income from that avocation to be Rs.50,000/- but that was obviously on the higher side for the reason that there is nothing on record to show that the deceased was an income tax assessee. PW1 Shokeen in his affidavit Ex.PW1/A has categorically stated that on the fateful day, he along with the deceased were going to Kharkhoda for selling the clothes on their separate motorcycles. PW2 Tabssum in her affidavit Ex.PW2/A had also asserted so, so had PW3 Hamidan in her affidavit Ex.PW3/A. PW5 Anwar Ali employed at M/s Tamanna Handloom, Kairana had stated that their concern is engaged in sale of cloth and Shokeen (deceased) resident of village Nala, Tehsil Kandhla, District Shamli was a cloth merchant and he used to purchase cloth from their shop. He had brought the sale invoices vide which deceased purchased clothes from their shop and proved those as Ex.P23 and Ex.P24, adding that the deceased was their regular customer and used to purchase in wholesale from their shop and he was selling those clothes at different places. In his cross-examination he could not be shattered on any material point. The respondents had not led any evidence in rebuttal. Therefore, it stands established on the record that the deceased was a cloth merchant. Therefore, the Tribunal was justified in taking his monthly income to be Rs.10,000/-. The authority ***Govind Yadav Versus The New India Insurance Company Limited*** (supra) referred to by learned counsel for the appellant is not applicable since the claimants have successfully proved avocation of the deceased to be a cloth merchant. Therefore, there was no occasion to assess the compensation on the basis of minimum wages payable to the workers at the relevant time. Therefore, this

argument of learned counsel for the appellant is rejected.

The second argument advanced by learned counsel for the appellant was that it was a case of contributory negligence on the part of the deceased, however, the Tribunal lost sight of that fact. Again this argument put forward by learned counsel for the appellant is without merit. The law is well settled that a fact should be first pleaded and then proved and any evidence led beyond the pleadings is not worth the paper on which it is written. A perusal of the written statements filed by the respondents goes to show that no such plea has been taken by them, rather they have denied the happening of the accident itself. The claimants on their part had brought sufficient evidence, both oral as well as documentary to prove that respondent No.1 was author of the accident by rash and negligent driving of the offending vehicle. The oral evidence was in the form of statement of PW1 Shokeen son of Sahidu, who had furnished his affidavit Ex.PW1/A deposing in consonance with the case of the claimants. In his cross-examination, his credibility could not be shattered on any material point. It was he, who had set the criminal machinery into motion by reporting the matter to the police and he was author of the FIR. His presence at the spot comes out to be natural and probable and account given by him to be worthy of reliance. Respondent No.1 could not summon courage to step into the witness-box and to depose on oath that he had not caused the accident by driving the offending vehicle in a rash and negligent manner. Similarly none on behalf of respondent No.2 get his statement recorded to state that the offending vehicle in question belonging to it and being driven by

respondent No.1 – Usman, had not caused any accident.

The appellant/respondent No.3 insurance company has also not adduced any evidence in that regard. From the statement of PW4 Sh.Rinku, Criminal Ahlmad in the Court of SDJM, Kharkhoda, who had brought the summoned case file titled 'State Versus Usman', it comes out that respondent No.1 is facing trial with regard to the accident in question.

There is not an iota of evidence to suggest that it was a case of contributory negligence. Therefore, such argument of learned counsel for the appellant cannot be accepted.

The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

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

25.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No