

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

Date of Decision: 02.03.2020

1. FAO-1208-2020 (O&M)

National Insurance Company Ltd. **... Appellant**

Versus

Babli and others **... Respondents**

2. FAO-1209-2020 (O&M)

National Insurance Company Ltd. **... Appellant**

Versus

Kamlesh and others **... Respondents**

3. FAO-1210-2020 (O&M)

National Insurance Company Ltd. **... Appellant**

Versus

Deepika and others **... Respondents**

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Om Pal Sharma, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J (ORAL)

1. This order shall decide three aforementioned appeals as

common questions of law and facts are involved arising out of three claim petitions involving the same accident wherein three persons died.

2. Statement of Vikram Singh driver of the offending vehicle before the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as “the Tribunal”) while facing a criminal case registered against him, is of hardly any probative value for the Insurance Company to rely on while holding on to one sentence in his cross-examination deposing “It is incorrect to suggest that accident took place with my vehicle due to my rash and negligent driving”. Challan had been presented under Section 173 Cr.P.C. (Ex. P-1) registered under Sections 279, 337 and 304-A IPC. The registration number of the offending vehicle was car bearing registration number HR-21G-4427, while the passengers were travelling in an Auto Rickshaw on the way from village Sunaria to Hansi when the accident took place on 24.07.2017 fatally wounding two passengers and a small child, who were not related to each other.

3. Driver Vikram was produced as RW-1, summoned by the Insurance Company, in its defence of the claim petition. The argument that RW-1 Vikram should have been called by the claimants and if they failed to do so, it should actually be a circumstance against the claimants, is a misconceived submission. In the face of criminal action, this witness was expected not to incriminate himself and admit guilt in his testimony. This is a fundamental protection guaranteed to him by Article 20 of the Constitution. The prosecution had to bring home his guilt in a criminal case. I am therefore not impressed by this argument of the learned counsel for the

Insurance Company, sufficient to tinker with the award.

4. It is not disputed that the offending vehicle was insured and the claim proceedings were under Section 166 of the Motor Vehicles Act, 1988 or that the driver did not hold a valid driving licence.

5. Mr. Om Pal Sharma, Advocate appearing for the Insurance Company argues that even though the accident took place on 24.07.2017 the complainant who got his supplementary statement recorded with the police on 04.12.2017 after 5½ months of the accident, was a manipulated statement to favour the complainant, whereas he was the person who initially lodged the complaint to the police on the date of the accident, mentioning neither the name of the driver nor registration number of the vehicle and mentioned it only as “HR 21...”.

6. The passengers who died were travelling in a three-wheeler bearing registration No. HR-39D-9610 which was driven by Rajesh, while the offending car bore registration No. HR21-G-4427. The claimants case was that it was the rash and negligent driving of the driver of the car i.e. Vikram which resulted in the accident. While the Insurance Company called Vikram to the witness box, they failed to call Rajesh, whose vehicle number was known to them. They could have privately investigated and located his address and apply to the Tribunal to summon him as their witness to prove the story at first hand. But the Insurance Company did not do so. Obviously Rajesh was an inconvenient witness, who if produced, might have spoken the truth as he had no criminal case lodged against him unlike Vikram.

7. Accordingly, Vikram's statement, to the extent relied upon, has to be ruled out and discarded as insufficient evidence to displace the award and turn it to nil. It is not improbable or unbelievable that complainant PW-4 Baljit would come by the name of driver Vikram on the date of accident and the chaos that must have ensued to try and save the lives of the injured. When he spoke in the supplementary statement, the FIR documents may be known to him available in public domain.

8. The Final Report/challans were presented in court on 12.12.2017 which is Ex. P-1 on the record of the Tribunal. On 04.12.2017, it can reasonably be expected that PW-4 Baljit who is a relative of one of the claimants Kamlesh claiming through her husband late Satpal to have learnt of offending car number and the driver's name. I have therefore, no cause for suspicion to enter this arena only because he was related to one of the deceased. It takes time for persons aggrieved by accidents to heal their wounds and it is not unknown that they do their own research. A complainant need not be an eye witness to the accident. It is expected of every citizen to report crime. However, Baljit was an eye witness. It is very difficult to attribute that he was planted by the complainants without there any evidence on record to conclusively suggest presence as improbable. Suspicion alone would not help in dispensing justice in motor accident cases unless there is suspicion that the entire episode was grafted.

9. Apart from this, Mr. Sharma has tried to raise a dispute on assessment of income, contending that it is on the higher side and should have been maintained at the rates of minimum wages available in 2017. In

response to this contention I would say that the Tribunal has exercised its discretion judicially and judiciously to arrive at definite opinions in the three cases and on all the issues fairly and reasonably. Discretion exercised by the Tribunal is not to be lightly disputed before this Court to change the manner in which discretion should have been exercised by the Tribunal. Conscious that in first appeal against an order both questions of law and fact are to be gone into but still, I think, the area which is covered by discretion properly exercised is not readily justiciable before the High Court in MACT appeal unless discretion and evaluation of evidence is visibly wide off the mark and wholly unacceptable. Then it ceases to be a pure question of law and fact unfit for judicial review by certiorari which is akin to appellate power in accident cases. The discretion to be exercised within reasonable limits in this class of litigation remains beyond the realm of law and facts in review and is nothing more than a judicial response of the Court to the totality of facts and circumstances that a case presents. However, judicial precedents which are binding as developed by the Supreme Court from time to time. Those have to be kept sight of and particularly the law in **National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009** in death cases.

10. In a case of compensation for death in a motor accident where witnesses shy away from court even if it takes place in a populated area there can be hardly any determination of the absolute truth of how an accident happened in moments which even a passenger may not know unless recorded by the electronic eye of a CCTV camera, which is not the

case. The principle to be applied in reconstruction of an accident is based on a preponderance of probabilities and a proper and thorough police investigation, which rarely happens.

11. Death has no financial compensation. There can be no accurate measure applied by known means, except when measured in terms of standardized formulas fashioned by courts in judicial precedents. It is not a pleasant exercise anyway to put a price on life and death and, therefore, I do not feel persuaded to interfere in these appeals, even if one lac rupees extra has been awarded in the child's case for the lost love, affection and dashed hopes the parents must have had losing a four year old child.

12. Besides, the current applicable judgments have been relied upon by the Tribunal to assess quantum of compensation under different pecuniary and non-pecuniary heads including paying due attention to the field covered by the Supreme Court judgment in *Pranay Sethi* case. The common award in appeal in these three cases, delivered by the Tribunal are in tune in its findings and assessment of compensation accurate to the Supreme Court decision, apart from other case law relied upon. The judgment in *Pranay Sethi* has been noticed, dealt with and applied. Any minor variation is ignorable, as in the case of the minor.

13. These three appeals are devoid of merit and the same are hereby dismissed with costs.

14. A photocopy of this order be placed on the files of the connected cases.

(RAJIV NARAIN RAINA)
JUDGE

02.03.2020

Satyawan

Whether speaking/reasoned:

Yes

Whether reportable:

Yes/No