

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

FAO-2898-2020 (O&M)

Date of decision: 11.11.2020

HDFC ERGO General Insurance Co. Ltd.

... Appellant

Versus

Smt. Krishna Devi and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Ashwani Talwar, Advocate
and Mr.Sehaj Mahajan, Advocate, for the appellant.

(Proceedings have been being conducted through video
conferencing, as per instructions.

G.S. Sandhawal, J. (Oral)

CM-8946-9500-CII-2020

Applications, filed under Order 41 Rule 27 read with Section 151 CPC for placing on record order dated 01.11.2019 (Annexure A-1) of the Criminal Court along with statements of Pawan Kumar, PW-8, Madan Lal, PW-9 and Sunder Lal, PW-2, as Annexures A-2 to A-4, recorded in the Court of CJM, Narnaul, are allowed, in view of the averments made in the application, duly supported by affidavit. Keeping in view the fact that the judgment of the Criminal Court was rendered just before the decision by the MACT, Narnaul on 14.11.2019, which is impugned herein, the same would be necessary to pronounce judgment in the present case. Office to tag the same at appropriate place.

CMs stand disposed of.

FAO-2898-2020

The present appeal is directed against the Award dated 14.11.2019 passed by the Motor Accident Claims Tribunal, Narnaul, under Section 173 of the Motor Vehicles Act, 1988.

Counsel for the appellant-Insurance Company has argued that the FIR was registered by Sunder Lal, brother of the deceased and there was non-mentioning of the vehicle's registration number and therefore, the insured vehicle bearing HR35 H-4100 had wrongly been involved in the accident and the liability of the Company to pay the amount of Rs.16,45,000/- on account of the death of Jaswant Singh was wrongly fastened.

The said argument is not liable to be accepted. A perusal of the paperbook would go on to show that the deceased was riding a motorcycle bearing HR35F-0993 when he was hit by a Bolero vehicle driven by respondent No.6, Bijender Singh due to which he expired at the spot. The deceased was stated to be a driver by profession and was also working as Clerk of two Advocates, namely, Sh. Ram Chander Chaudhary and Sh. Sanjay Yadav and was also selling milk and earning Rs.33,000/- per month.

The FIR No.465 dated 24.08.2017 had been lodged under Sections 279, 304A IPC at Police Station Narnaul, after 3 hours by Sunder Lal, brother of the deceased. The claim petition was filed, accordingly, by the wife of the deceased alongwith the children. The 2 witnesses, namely, Madan Lal and Pawan Kumar were examined as PW-4

& PW-5, who deposed regarding the factum of the accident with the insured vehicle. The MACT noticed that in the FIR, the registration number of the offending vehicle had not been mentioned which was sought to be highlighted by the Insurance Company. However, the MACT placed reliance upon the statement of the said eye-witnesses that they had noted the registration number of the offending vehicle at the spot since the accident took place at a busy place, namely, City Marriage Palace, Nizampur Road, Narnaul. It was noticed that respondent No.6 had not appeared in the witness-box to depose that he was not the driver in the offending vehicle. Resultantly, a finding was recorded that the accident happened due to the rash and negligent driving of the vehicle.

A perusal of the statements of Pawan Kumar and Madan Lal which have now been placed on record as Annexures A-2 & A-3, in view of the order dated 06.10.2020, would go on to show that they had turned hostile before the CJM, Narnaul that they had seen the accused person in the Court and he was not the person, who had caused the accident. However, in cross-examination the prosecution had got on record the fact that their statements had been recorded by the police (Ex.PW-8/A and PW-9/A) that they had seen the Bolero bearing No.HR35H-4100 and they were, accordingly, confronted with their statements. It is on that basis, the said respondent No.6-driver earned the benefit of acquittal from the Criminal Court of CJM, Narnaul.

Thus, sufficient material had come on record to show that the vehicle's registration number had been mentioned by the eye-witnesses.

The statement was recorded by the police and therefore, the Insurance Company cannot contend that the material was not on record of involvement of the vehicle and it is liable to pay the amount which has been granted by the MACT. It has already been noticed that the FIR was registered within 3 hours of the accident at 11 PM on 24.08.2017 and the accident had taken place at 8.45 PM. Resultantly, the argument raised, as such, that the vehicle was wrongly involved, is without any basis.

Coming to the issue of quantification also, the income of the deceased was taken @ Rs.10,000/- per month. He was stated to be of 45 years of age. Keeping in view the judgment of the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi & others (2017) ACJ 2700**, an addition of 25% was made to treat the income @ Rs.12,500/- per month. The multiplier of 14 was applied and 1/4th cut was put to assess the dependency at Rs.15,75,000/-. Additional amount of Rs.15,000/- towards funeral expenses and another Rs.15,000/- on account of loss of estate and Rs.40,000/- on account of loss of consortium was also granted, to take the total to Rs.16,45,000/- along with interest @ 7.5% per annum from the date of filing the claim petition till realization. The argument raised the monthly income assessed @ Rs.10,000/- was a higher amount, is also without any basis since the stand of the claimants was that not only he was working as a Driver but also working as Clerk of two advocates and was also selling milk and thus, sustaining a large family of five members.

In such circumstances, no irregularity or illegality can be said to be found in the award of the MACT, Narnaul in granting the said compensation. Accordingly, finding no merit in the present appeal, the same is dismissed in limine.

11.11.2020
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes