

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

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**CM-6639-CII-2021 in/and
FAO-653-2021 (O&M)
Decided on : 06.08.2021**

The Oriental Insurance Company Ltd.

... Appellant

Versus

Joginder Kaur & others

... Respondents

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

Present: Mr.R.K.Bashamboo, Advocate, for the applicant/appellant.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral):-
CM-6639-CII-2021

Application for permission to place on record written statement filed on behalf of respondents No.1 and 3 as Annexures A-1 & A-2, is allowed, in view of the averments made in the application, duly supported by affidavit. Said documents are taken on record, subject to just exceptions.

CM stands disposed of.

FAO-653-2021 (O&M)

The appellant-Insurance Company is in appeal, filed under Section 173 of the Motor Vehicles Act, 1988, against the award of the Tribunal, MACT, Patiala dated 10.12.2019, wherein a sum of Rs.11,76,820/- has been awarded alongwith 7.5% interest from the date of the petition till the actual realization to the claimants.

Counsel has vehemently submitted that the deceased along with his friend-Sham Lal were riding on a motorcycle and he was under the influence of liquor and it was on account of his own negligence that the accident had taken place and therefore, the compensation was not liable to be awarded.

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A perusal of the paperbook would go on to show that Balkar Singh along with his friend-Sham Lal were going on the motorcycle on 08.05.2017 when the vehicle was hit by the offending insured motorcycle at around 7.30 PM which was driven in a rash and negligent manner. Being injured, they were rushed to Rajindra Hospital, Patiala and Balkar Singh succumbed to the injuries on the way. The FIR was lodged on the next day i.e. on 09.05.2017 and the statement of the pillion rider, the name of the driver of the offending vehicle and number were duly mentioned in it. Unfortunately, the said Sham Lal died during the pendency of the proceedings before the Tribunal and his death certificate was brought on record as Ex.C10.

No argument had been raised before the Tribunal that the deceased was under the influence of liquor, as per the enquiry report submitted by the police on the basis of which cancellation report was accepted by the Judicial Magistrate 1st Class, which is now sought to be argued. However, it is a matter of fact that in the postmortem report (Ex.C8) of the deceased, there was no mention of liquor smell from the deceased. Even a perusal of the written statement filed by the appellant-Company would go on to show that there was no such defence taken and therefore, the said defence cannot be raised merely on the strength of a report of the police.

It is settled principle that in Motor Vehicle proceedings, preponderance of the probability has to be taken into consideration. It has come on record that the offending vehicle was found involved in the accident the very next date on the lodging of the FIR by the injured pillion rider. Therefore, the Insurance Company is under the liability to pay the amount.

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The same has been granted on the basis of assessing the income of the deceased as ordinary labourer @ Rs.7568/- per month, which was the prevalent rate on the date of the death, by taking his age as 50 years and granting additional amount of 25% as future prospects. The multiplier which has been applied is 13 and compensation on the conventional heads of loss of estate, loss of consortium and funeral expenses to the extent of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- have been given, as per the judgment of the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi & others 2017 (4) RCR (Civil) 1009.**

The Apex Court in **Anita Sharma and others Vs. The New India Assurance Co. Ltd. and another 2021 (1) SCC 171**, while deciding the motor accident cases for compensation, has held that the claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt, which applies to the criminal proceedings, is not to be applied. Negligence is not to be proved on the basis of proof, which is beyond reasonable doubt.

In such circumstances, this Court is of the opinion that just compensation has been awarded by the Tribunal in favour of the claimants which is not liable to be interfered with and accordingly, finding no merit in the present appeal, the same is dismissed in limine.

AUGUST 06, 2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No