

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

FAO No. 1746 of 2021(O&M)

Date of Decision: October 11, 2021.

IFFCO TOKIO General Insurance Company Limited APPELLANT

Versus

Laxmi and others RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This appeal has been by the Insurance company challenging award dated 11.02.2021 passed by the learned Motor Accident Claims Tribunal, Mewat at Nuh (for short, the 'Tribunal').

Brief facts as stated in the petition under Section 166 of the Motor Vehicles Act, 1988 filed by the claimants are that, on 23.09.2018 at about 7.30 p.m., Sonu @ Hariom (deceased) was proceeding to Gokul Beraj from Mathura for participating in Ganpati Visrajan on his motorcycle bearing registration No.UP-85K-1251. At about 7.30 p.m. when he reached near Damondpura on Mathura-Aurangabad road, offending vehicle bearing registration No.UP-85AQ-5965 being driven in a rash and negligent manner by respondent No.9,

struck against the motorcycle of Sonu @ Hariom. As a result thereof, Sonu @ Hariom received fatal injuries. He was removed to the hospital, however, Sonu @ Hariom succumbed to the injuries on 27.09.2018 at SMS Hospital, Jaipur. FIR No.482 dated 28.09.2018 (Ex.P2) was registered in respect to the incident. Compensation to the tune of ₹30,00,000/- was claimed by the claimants. Claim petition filed by the claimants was resisted by the Insurance Company as well as the driver and owner of the offending vehicle by filing separate written statements.

From pleadings of the parties, the learned Tribunal framed the following issues on 05.04.2019:-

1. Whether the accident in question resulting the death of Hariom son of Duli Chand, took place on 23.09.2018 at about 7:30 PM in the jurisdiction of Police Station Sadar Bajar, District Mathura due to rash and negligent driving of vehicle bearing registration No.UP-85AQ-5965 driven by respondent No.1? OPP
2. If issue No.1 is proved, whether the petitioner is entitled to compensation. If so to what amount and from whom? OPP
3. Whether respondent No.1 was not having a valid and effective driving licence at the time of alleged accident and the respondent No.2 has violated the terms and conditions of the insurance policy? OPR-3
4. Relief.

Learned Tribunal on consideration of the facts and circumstances concluded that accident in question had occurred due to sole negligent and rash driving of the offending vehicle bearing registration No.UP-85AQ-5965 by respondent No.9-Varun Dev. Accordingly, Issue No.1 was decided in favour of the claimants.

A sum of ₹17,23,800/- was afforded to the claimants as compensation. Income of Sonu @ Hariom (deceased) was assessed as Rs.8,000/- p.m. Increase in income to the extent of 40% was afforded.

Deduction of 1/5th was effected and multiplier of 15 was applied. Rs.15,000/- each was afforded towards funeral expenses and loss of estate. Rs.40,000/- was afforded towards loss of consortium.

Present appeal has been filed by the Insurance company primarily assailing finding of the learned Tribunal on Issue No.1. Learned counsel for the appellant submits that there is an unexplained delay of five days in lodging of FIR in this case. Accident in question took place on 23.09.2018 whereas the FIR in question was registered on 28.09.2018. Moreover, the said FIR was lodged by PW2 Vishnu Gola, who was not an eye-witness of the accident. Furthermore, there are material discrepancies in the deposition of eye-witness, PW3 Raj Kumar and propounder of the FIR, PW2 Vishnu Gola. Therefore, learned Tribunal has grossly erred in holding that the accident took place due to the rash and negligent driving of the motorcycle by its driver, respondent No.9-Varun Dev, resulting in the death of Hari Om @ Sonu son of Dhuli Chand. Claimants, it is submitted, have failed to prove the same. No serious arguments have been raised insofar as quantum of compensation is concerned. It is prayed that this appeal be allowed and claim petition be dismissed.

Heard learned counsel for the appellant and have gone through the file with his able assistance.

It is a matter of record that the accident took place on 23.09.2018. Hari Om @Sonu (deceased) after the accident was initially taken to the District Government Hospital by the police officials. Thereafter, he was referred to SMS Hospital, Jaipur, but was taken to City Hospital, Mathura and then admitted in the SMS Hospital, Jaipur. Hari Om @ Sonu ultimately succumbed

to his injuries on 27.09.2018. It is thereafter that FIR No.482 (Ex.P2) was registered on 28.09.2018 at Police Station Sadar Bazar, Madhura. In this factual matrix, learned Tribunal has rightly held that the delay in lodging of the FIR is not fatal to the case of the claimants. Needless to say, family members would be more engrossed in trying to save the life of injured rather than be bothered about timely registration of FIR. Challan/final report under section 173 Cr.P.C. in FIR No.482 Dated 28.09.2018 was admittedly presented against respondent No.9-driver, who was facing trial in the said matter. Factum of the accident taking place on 23.09.2018 is succinctly borne out from the evidence on record. Recovery of both the motorcycles is a matter of record. Owner and driver of the offending motorcycle did not step into the witness box. Learned counsel for the appellant is unable to point out any evidence on record to indicate collusion between the claimants and owner/driver of the offending vehicle. Furthermore, discrepancies sought to be highlighted in the statements of PW3 Raj Kumar and PW2 Vishnu Gola do not in any manner detract from the case of the claimants. The fact that FIR was not registered on the statement of eye-witness cannot be a ground to discard the claimants' case or presume the same to be incorrect, especially in view of the cogent and sufficient evidence which has been placed on record by the claimants. Perusal of the statements of PW2 Vishnu Gola and PW3 Raj Kumar as well as their cross-examination, which have been duly reproduced in the grounds of appeal itself, in fact, buttress and substantiate the case of the claimants.

Keeping in view the facts and circumstances as above, there is no illegality or infirmity in the impugned award dated 11.02.2021 passed by the learned Motor Accident Claims Tribunal, Mewat at Nuh which calls for any

interference by this Court.

No other argument has been raised.

Appeal is accordingly dismissed with no order as to cost.

October 11 , 2021.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No