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

*129*

**FAO No.2848 of 2021 (O&M)**
**DATE OF DECISION: 14th DECEMBER, 2021**

**Tata AIG General Insurance Company Limited**

**…. Appellant**

**Versus**

**Smt. Vijay and others**

**…. Respondents**

**CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Sachin Ohri, Advocate for the appellant.

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**RAJBIR SEHRAWAT, J. (Oral)**

The appeal has been filed by the appellant-Insurance Company challenging the award dated 26.07.2021 passed by the Motor Accident Claims Tribunal, Narnaul (for short, the Tribunal), whereby an amount of ₹20,42,600/- along with interest, from the date of institution till its realization, has been awarded as compensation to the claimants.

The parties in the present appeal are referred to as they were described in the claim petition.

The brief facts, as mentioned in the award passed by the Tribunal are; that on 17.05.2019, Sandeep was coming to his house in village Sujapur from the house of Sunder Lal in village Tejpur, on his motorcycle bearing registration No.HR35P-9264. At about 9.30 p.m. when he reached village Bochadiya on Rewari-Narnaul road near Balaji hotel, then a tempo bearing registration No.HR66B-5095, which was being driven rashly and negligently by respondent No.1, came from front side. The said tempo hit the motorcycle of Sandeep head-on. On account of the said accident, Sandeep suffered multiple injuries. Due to the injuries suffered by Sandeep in the accident, he died. One Naresh son of Sanwant resident of village Tejpur and Ramesh son of Mehar Chand and other passerby witnessed the said accident. The attempts were made to stop the tempo but respondent No.1 along with his tempo fled away from the spot. FIR No.140 dated 18.05.2019 was got registered at Police Station Ateli. On the basis of these facts, the claim petition was filed by the claimants with the averments that Sandeep was of the age of 21 years. He was earning Rs.50,000/- per month by doing work pertaining to building repair, painting and selling of construction materials. Accordingly, a compensation of Rs.50.00 Lakh was claimed.

Respondent Nos.1 and 2 filed their written statement and pleaded that no accident, as alleged by the claim petitioners, took place. The vehicle has falsely been involved in the case.

The respondent No.3, insurance company filed written statement asserting therein that though the respondent-insurance company was denying the accident in toto, however, if the Tribunal comes to the conclusion that the death of deceased Sandeep was result of accident, in that event, the deceased himself was negligent. The deceased was driving the motorcycle negligently and without any protective helmet. He was not having valid driving licence. The tempo was being driven by the driver in violation of the terms and conditions of the insurance policy. Hence, the insurance company was not liable for making any payment of compensation.

To prove the assertions made in the claim petition, the petitioner examined PW-1 Smt. Vijay wife of Dalip i.e. the mother of the deceased and PW-2 Naresh, the alleged eye witness of the accident. The respondent Nos.1 and 2 had also placed on record the copy of insurance policy as Ex.R-1, copy of R.C. as Ex.R-2 and copy of the driving licence of the driver as Ex.R-3. The insurance company did not lead any evidence; whatsoever; except placing on record the insurance policy as Ex.R-4. After considering the respective evidence of the parties and appreciating the same, the Tribunal awarded an amount of Rs.20,42,600/- as compensation. It is against that award passed by the Tribunal, that the present appeal has been preferred by the insurance company.

Arguing the case, the counsel for the appellant-insurance company has submitted that in the present case, the FIR was registered against an un-known driver and the number of the offending vehicle was also not mentioned. It is after a gap of 43 days that one Naresh made a statement before the police under Section 161 Cr.P.C. that he was the eye witness of the accident. Hence, it is submitted that the alleged eye witness is only a made-up witness to claim compensation. There was no eye witness to the accident in question. Referring to the statement made by PW-2 Naresh, the eye witness, the counsel for the appellant has submitted that in the cross-examination, the witness has admitted that the police had reached the spot after two days of the accident and had also visited his hotel but he had not disclosed the number and vehicle involved in the accident. This substantiates the fact that he was not the eye witness. The counsel for the appellant has further submitted that the Tribunal has wrongly assessed the income of the deceased as Rs.13,000/- per month without there being any documentary evidence to that effect. Hence, the compensation deserves to be reduced by taking the notional income of the deceased at the level of minimum wages prescribed at that time by the Government under Minimum Wages Act. The counsel has relied upon the judgments rendered by this Court in the case of ***Balbir @ Leela and another Vs. Vikas and others, 2014 (1) PLR 459***, rendered by Karnataka High Court in the case of ***Bajaj Allianz General Insurance Co. Ltd. Vs. B.C. Kumar and another, 2009 (6) Air Kar R 349*** and rendered by Hon'ble the Supreme Court in the case of ***United India Insurance Co. Ltd. Vs. Rajender Singh and others, 2000 (2) R.C.R. (Civil) 483***.

Having heard the counsel for the appellant and having perused the case file, this Court does not find any substance in the arguments raised by the counsel for the appellant. Needless to say that registration of any FIR is not the *sine qua non* for filing the claim petition for compensation on account of death in an accident; under the Motor Vehicles Act, 1988. Therefore, mere fact that any FIR is not registered or the police has recorded the statements; after any particular period; even if the FIR is registered, is totally irrelevant for the purpose of the claim petition in a motor vehicle accident case. The claimants had no control over the investigation or the Investigating Officer. The Investigating Officer may record the statement of a witness or may even prohibit a witness from making any statement until a particular point of time, if the same is in the interest of proper investigation of the case or if that is so desired by such officer. Therefore, any delay in recording a statement or even not making a particular statement till a particular point of time cannot, legally, be made a basis for arriving at any conclusion against the claimants qua the factum or manner of happening of the accident. In a claim petition, the factum of registration of the FIR and the consequent filing of challan, can be only a supporting fact to the effect that accident had taken place and that the vehicle, as stated to be involved in the claim petition, was in fact involved in the accident. However, the proceedings of the criminal case, in itself, are totally irrelevant. Another fact which has come on record is that PW-2 Naresh, who claimed himself to be the eye witness of the case; has duly been examined by the claimants. He has deposed that the accident had taken place in his presence. The witness has been subjected to cross-examination, however, nothing substantial could be extracted from the testimony of this witness. Although, the counsel for the appellant has submitted that this witness has admitted the fact of visit of the police to his hotel on the very next day for investigation, but on that day also the number of the vehicle was not disclosed by this witness, therefore, his subsequent addition of the vehicle number is only a false assertion, however, even this argument is to be noted only to be rejected. Once this witness was an eye witness and the FIR qua the accident was registered on the very next day, then merely because the police had not recorded the statement of this witness on the very next day or that this witness had not forcibly disclosed the number of the vehicle to the police; would not denude the testimony of this witness made before the Tribunal; altogether. The fact remains that this witness has duly deposed the fact that the accident had taken place and he has claimed the offending vehicle to be involved in the accident before the Tribunal; while appearing as a witness. It is only in the dark as to why he had not disclosed the number of the vehicle to the police. There can be several reasons for not disclosing the same, including the fear of reprisal of pressure from the owner or from the police. But the facts remain that while appearing before the Tribunal, he has categorically disclosed the number of the vehicle, as such. Although, the counsel for the appellant has relied upon the judgments rendered in the cases of ***Balbir @ Leela,***

***Bajaj Allianz General Insurance Co. Ltd. and United India Insurance Co. Ltd.*** (supra), however, this Court finds that the said judgments are distinguishable of the facts of their own case. There cannot be any general proposition of law that merely because the number of offending vehicle is not mentioned in the FIR, that would, *ipso facto*, exclude the involvement of the vehicle in the accident altogether.

Another aspect which deserves to be noted is that from the day one, the respondents have been denying involvement of their vehicle in this accident. Even the driver of the vehicle had denied the involvement of his vehicle in this accident. However, neither that driver had the courage to appear as a witness before the Tribunal to face the cross-examination in this regard nor has the insurance company led any evidence whatsoever, much less to speak of evidence either to show that the vehicle was not present at that place on that date and time or on any other aspect which could exclude the possibility of involvement of this vehicle in accident at the relevant time. The respondents having failed to lead any evidence; and not shown the courage to face the cross-examination qua the involvement of their vehicle in the accident, cannot now be permitted to turn around and claim non-involvement of the vehicle only by finding some fault with the statements recorded by the police in the criminal case. Hence, this Court does not find any fault with the finding recorded by the Tribunal that the vehicle named in the claim petition was actually involved in the accident.

Even, the argument of the counsel for the appellant qua applicability of minimum wages is fallacious; in the first instance. The concept of minimum wages is applicable qua particular categories of specified establishments and to the employments mentioned in the schedule attached to the Act. Still further even the State Governments prescribe more than one types of Minimum Wages, like; the Minimum Wages and the D.C. rates. Therefore, while the Tribunal may take someone from such rates, however, the Tribunal is not bound by any minimum wages prescribed by the government at the relevant time. It is common knowledge that the minimum wages, being the statutory guarantee, are prescribed much below the prevalent wages at the relevant time because the prescribed minimum wages are supplemented by some other compensatory statutory benefits like over-time charges. The Tribunal has taken judicial notice of the prevalent situation coupled with the statement made by the mother of the deceased. This Court does not find any fault with the conclusion arrived at; by the Tribunal even on this count. Moreover, although the insurance company has taken the plea of applicability of Minimum Wages, however, even the evidence to this effect has not been led by the insurance company before the Tribunal; to show as to what were the minimum wages prescribed by which authority on the relevant time in the concerned area. Having failed to produce even any notification regarding the minimum wages before the Tribunal, the insurance company cannot be permitted now to take plea that some un-known minimum wages should have been applied by the Tribunal for determining the notional income of the deceased. Hence, this argument is also without any force.

In view of the above, finding no merits in the present appeal, the same is dismissed.

Let the statutory amount deposited by the insurance company before this Court at the time of filing of the appeal; be sent to the Tribunal concerned; for onwards disbursal to the claimants.

All pending miscellaneous applications are also disposed of as such.

**(RAJBIR SEHRAWAT)**
**JUDGE**

**14th DECEMBER, 2021**
*'sandeep'*

*Whether speaking/reasoned:* *Yes*

*Whether Reportable:* *Yes*