

FAO-8192-2017 (O&M) with
XOBJC-24-2019(O&M)

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

FAO-8192-2017 (O&M) with
XOBJC-24-2019(O&M)
Date of decision:-5.10.2021

M/s Royal Sudram Alliance Insurance Company Ltd.

...Appellant

Versus

Shyamwati and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.D.K. Prajapati, Advocate for
Mr.R.S. Madan, Advocate
for the appellant.

Mr.Balkar Singh, Advocate
for respondents No.1 to 4/cross-objectors.

H.S. MADAAN, J.

CM-3138-CII-2019 in
XOBJC-24-2019

For the reasons mentioned in the application, the same stands
allowed and delay of 218 days in filing the cross-objections stands
condoned.

FAO-8192-2017 (O&M) with
XOBJC-24-2019(O&M)

On account of death of Bansi alias Bansi Lal son of Jagbir,
resident of village Bhiduki, District Palwal in a motor vehicular accident,
which took place on 10.10.2015 at 3:30/4:00 p.m. in the area of

Hassanpur Chowk due to rash and negligent driving of vehicle make Maruti Wagon-R car bearing registration No.HR-30-P-7044 (hereinafter referred to as the offending vehicle) by Gajraj Singh (respondent No.1 before the Tribunal), legal representatives of the deceased, namely, Smt.Shyamwati, aged about 22 years – widow, Master Kunj Tanwar, aged about 6 months – minor son, Jagbir aged 63 years – father and Smt.Mohanwati, aged 61 years – mother of the deceased had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against Gajraj Singh – driver, Mukesh Kumar – owner and M/s Royal Sundram Alliance Insurance Company Ltd. Chennai – insurer of the offending vehicle.

Notice of the claim petition was given to the respondents, who put in appearance and offered a contest. Vide detailed Award dated 4.9.2017, the claim petition was accepted and compensation of Rs.30,88,172/- was awarded to the claimants payable by all the three respondents jointly and severally with interest at the rate of 7.5 % per annum from the date of filing of the claim petition til actual realization.

Feeling aggrieved by the said award, the respondent No.3 – insurance company has filed an appeal before this Court, notice of which was given to the respondents. Respondents No.1 to 4 have filed cross-objections seeking enhancement of compensation.

I have heard learned counsel for the parties besides going through the record.

The main thrust of arguments advanced by learned counsel for the appellant – insurance company was that the accident in which

Bansi @ Bansi Lal had suffered injuries to which he had succumbed, was not caused by respondent No.1 - Gajraj Singh on account of rash and negligent driving of the offending vehicle. In support of is that contention, learned counsel for the appellant – insurance company has argued that there is gross delay in reporting the matter to the police inasmuch as the accident had taken place on 10.10.2015 at about 3:30/4:00 p.m., whereas the FIR was lodged after about six days on 16.10.2015 and in the FIR neither the particulars of the vehicle nor of its driver are given, which clearly goes to show that the vehicle was planted in this case later on by the claimants in connivance with the Investigating Officer just to get compensation. He has further submitted that in the MLR of the deceased, it is mentioned that deceased had suffered injuries for the reason that his motorcycle had skidded, in that way, the Tribunal has reached a wrong conclusion with regard to involvement of Wagon – R car in question in the accident or the accident having taken place on account of rash and negligent driving of the said car by Gajraj Singh.

On the other hand, learned counsel representing the claimants/cross-objectors has contended that though in the FIR the registration number of the vehicle and name of its driver are not mentioned but it has to be kept in mind that during the course of investigation involvement of Wagon- R car bearing No.HR-30-P-7044 driven by Gajraj Singh – respondent No.1 in a rash and negligent manner, such vehicle belonging to Mukesh Kumar – respondent No.2 and insured with M/s Royal Sudram Alliance Insurance Company Ltd., Chennai – respondent No.3, was found to be there. On completion of investigation,

Gajraj Singh has been challaned for causing death of Bansi @ Bansi Lal by rash and negligent driving of Wagon – R car in question and trial against him is still going on, which falsifies the version set up by the appellant – insurance company.

After considering the rival contentions and going through the record, I find that the claimants have successfully proved the involvement of Wagon-R car in question in the accident and so also that respondent No.1 Gajraj Singh was author of the accident by his rash and negligent driving of Wagon – Ra car in question resulting in causing accident, in which Bansi @ Bansi Lal had expired. Therefore, his legal representatives were justified in filing the present claim petition against all the three respondents. It has to be kept in mind that Motor Vehicles Act is a piece of welfare legislation and its purpose is to provide prompt compensation to the persons suffering injuries in a motor vehicular accident or to family members of such persons unfortunately dying in such road mishaps. A liberal approach in the matter is required. Strict rules of procedure and evidence are not applicable in proceedings before the Tribunal. Furthermore, rules of procedure are handmaid of justice. Although in the FIR in question, the particulars of the vehicle involved in the accident and name of its driver are not there but that does not make much difference. The FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that the police can come

to know about the culprit/criminal, who had committed the crime. Merely for the reason that accused is not named in the FIR does not result in causing any dent in the prosecution story. Here although there has been some delay in reporting the matter to the police, but such factor may be quite relevant during the criminal trial but it cannot be given much weightage in proceedings for determining compensation payable in a petition under Section 166 of the Motor Vehicles Act. It has to be noticed that during investigation involvement of the vehicle in question and respondent No.1 being its driver was found that is why the driver was challaned and he is facing trial. In **Girdhari Lal Versus Radhey Shyam and others, 1994(1) ACJ 168**, it was observed that when a driver is tried on account of rash driving that leads to a prima facie conclusion that the accident occurred due to rash and negligent driving.

Furthermore, though the respondents offered denial with regard to involvement of Wagon-R car in the accident but strangely enough respondent No.1 did not step into the witness box to depose that as a matter of fact he has not caused the accident by his rash and negligent driving of Wagon-R car. Similarly respondent No.2 – Mukesh Kumar – owner of that car did not appear as a witness for respondents to show that the said car in question had not caused the accident in which Bansi @ Bansi Lal had suffered injuries to which he had succumbed.

On the other hand, the claimants had examined PW4 Prakash Kumar, who gave eye-witness account of the accident supporting the prosecution story on material points. PW6 Jagdish Kumar had also corroborated the version as deposed by PW4 Prakash Kumar. PW7 HC

Manoj Kumar, Investigating Officer of the criminal case had deposed about registration of the FIR in question and number of the offending vehicle giving to be known as HR-30P-7044. The investigation being carried out revealing that on 10.10.2015 respondent No.1 was driver as he had hired the offending vehicle. Respondents had not produced any evidence in rebuttal. Respondent No.3 insurance company had examined RW1 Faizan Ahmad, Recordkeeper of Asian Hospital, Faridabad, who had proved on record medico legal report of deceased as Ex.P41. Therefore, the Tribunal was fully justified in coming to the conclusion that Wagon-R car bearing registration No. HR-30-P-7044 was involved in the accident and it was being driven by respondent No.1 – Gajraj Singh in a rash and negligent manner at the relevant time. Therefore, arguments advanced by learned counsel for the appellant insurance company in that regard are rejected. Learned counsel for the appellant/insurance company has relied upon authorities i.e. **Magma HDI General Insurance Co. Ltd. Versus Mukesh Devi and others, 2018(1) PLR 720, Chand Singh Versus Rajinder Singh, 2018(3) RCR(Civil) 357, Reliance General Insurance Co. Ltd. Versus Munshi Singh and others, 2015(9) RCR(Civil) 190, The Oriental Insurance Co. Ltd. Versus Kamla and others, 2016(1) LAR 635, Oriental Insurance Co. Ltd. Versus Kalawati and others, 2013(54) RCR(Civil)86.** However, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

Now coming to the compensation awarded to the claimants.

Learned counsel for the appellant/insurance company has

contended that the compensation awarded is on higher side. Whereas learned counsel for the respondents/cross-objectors controverts that contention stating that the compensation is on lower side and the Tribunal fell in error in not making any addition to the income of the deceased towards future prospects. The Tribunal in para No.24 has discussed the avocation and income of the deceased observing that he was working as a Teacher with K.C.M. Banchari, Hodal besides running a sports academy under the name and style of Tanwar Sports Academy. PW1 Ganpat Ram, Clerk had brought on record the attendance register stating that the deceased was working as PTI in their school at monthly salary of Rs.18,410/-. He had proved extract of the extract of the attendance register as well as attested copies of bail bills for the period from February, 2015 to October, 2015 as Ex.P1 to Ex.P9. In absence of any rebuttal evidence, the Tribunal had taken the monthly income of the deceased to be Rs.18,410/-.

In this case the deceased was found to be aged as 26 years. The Tribunal has not made any addition towards future prospects. Considering the age of deceased and ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, an addition of 40% is required to be made. Doing that the monthly income of the deceased is taken as Rs.18,410 + 7,364 = Rs.25,774/-.

Deducting 1/4rd of the amount towards personal and living expenses of the deceased, the monthly dependency of the claimants comes out to Rs.19,331/-(25,774 - 6443), annual to be Rs.2,31,972/-(19,331 x

12).

Considering the age of the deceased, the multiplier 17 was rightly applied by the Tribunal. Doing that the compensation amount is worked out to Rs.39,43,524/- (2,31,972 x 17).

After adding an amount of Rs.1,31,450/- towards medical expenses, the compensation comes out to be Rs.40,74,974/-(39,43,524 + 1,31,450).

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors. (supra)**, the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 40,74,974 + 70,000 = 41,44,974/-.

The Tribunal has awarded compensation of Rs.30,88,172/-.

In this way, the additional amount comes out to Rs.10,56,802/- (41,44,974 - 30,88,172). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the additional amount of Rs. 10,56,802/-. Since the amount has been enhanced, the directions with regard to release of compensation amount to the claimants in cash and with regard to deposit in the form of FDR shall be same as directed by the Tribunal in that Award.

In view of the above discussion, the FAO-8192-2017 filed by the appellant – insurance company stands dismissed whereas XOBJC-24-2019 filed by the claimants are allowed.

FAO-8192-2017 (O&M) with
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Since the main appeal i.e. FAO-8192-2017 stands dismissed
and XOBJC-24-2019 has been allowed, the miscellaneous application, if
any, stands disposed of accordingly.

5.10.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No