

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

206

FAO-7094-2019 (O&M)

Date of decision: 09.11.2021

NATIONAL INSURANCE COMPANY LIMITED ..Appellant

Versus

GURMAIL KAUR AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Radhika Suri, Advocate for the appellant.

Mr. Tejender Pal Singh, Advocate for respondent No.1 to 4.

Mr. Munish Puri, Advocate for respondent No.6.

ANIL KSHETARPAL, J (Oral)

1. The hearing of the case was held through video conferencing on account of restricted functioning of the Courts due to the Covid-19. The insurance company assails the correctness of the award passed by the Motor Accidents Claims Tribunal, Sangrur, (hereinafter referred to as 'the Tribunal') on 04.09.2019.

2. The Tribunal, while allowing the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, has directed the insurance company to pay compensation of Rs.82,65,850/- to the claimants along with interest @ 7.5% per annum from the date of filing of the claim petition till the actual realisation of the amount.

Sh. Harcharan Singh along with Sh. Jagtar Singh were riding on a motorcycle. Sh. Harcharan Singh dropped Sh. Jagtar Singh at the Bus Stand, Shutrana. Sh. Jagtar Singh had to cross the road in order to board a bus from the other side of the Highway. He, instead of going through a proper passage, jumped over the diversion wall constructed to divide the National Highway. The truck bearing registration No.JK-03F-4548 travelling at that particular time on the National Highway hit him, resulting in his death. On the statement of Sh. Harcharan Singh, FIR No.274, dt. 08.10.2018, under Section 279 and 304-A IPC was registered at Police Station, Patran.

4. The claimants (widow and two minor children along with the deceased's mother) filed the claim petition. The owner and the driver of the offending vehicle i.e. Truck bearing registration No.JK-03F-4548 filed the reply contesting the petition. It has been averred that a false case has been registered against respondent No.1 as neither respondent No.1 nor the truck in question is involved in the accident. The insurance company filed its reply by taking all the legal objections.

5. The claimants in order to prove their case examined Sh. Harcharan Singh, an alleged eyewitness. He is the person who had dropped Sh. Jagtar Singh on Bus Stand, Shutrana. In the examination in chief, he had stated that the deceased had to cross the road in order to board the bus for going to Patran when the truck bearing No.JK-03F-4548 driven by

respondent No.1 in a rash and negligent manner caused the accident, resulting in the death of Sh. Jagtar Singh. The cross examination of Sh. Harcharan Singh makes a relevant reading, which is extracted as under:-

“I knew deceased Jagtar Singh for the last 26 years. He was my friend. On 08.10.2018, he was posted at Talwandi Malik and he came at PHC Shutrana for official work. At that time, I was posted at PHC Shutrana. I can not tell the purpose of visit of deceased Jagtar Singh in PHC Shutrana but he came at about 11.00 am. He remained there about upto 1.00/1.15 pm. I did not go police station. My statement was recorded by the police at CHC Patran at about 2.30/3.00 pm. The police did not reach at the spot at the time of accident. I did not went to the spot along with police. I was present at the time of accident. I remained there after dropping Jagtar Singh. The driver of the offending vehicle fled away the spot after leaving the truck. Partan road is National Highway and one way road and there is divider between the road. The accident took place on the road when Jagtar Singh was tried to cross the divider and at that time, his one leg was on the divider and second leg was on road side. It is correct that there no cut between the road to cross the road. There is a service line of both sides of road. It is wrong to suggest that no accident was took place with offending vehicle. It is wrong to suggest that false case was registered.

Cross examination by Sh. Ashish Kumar, Advocate, Counsel for respondent No.3.

I have seen the site plan in the file of criminal case produced today by CW5 Satbir Singh. Site plan was correctly prepared at per spot. I dropped Jagtar Singh at Mark Z in the site plan

Ex.R-1. There is a road which is coming from Patran then there is a divider and then there is Khanauri Road. There is no cut in the divider at the spot. Truck was coming from Patran side. Jagtar Singh was crossing the main road in order to go to service lane. He was to board the bus which was to be parked in the service lane. That bus was seen coming. It is wrong to suggest that the accident occurred due the negligent of Jagtar Singh and he was in hurry to board the bus and he crossed the road without watching the traffic on both side. There was no rasta to go to service lane of one side to other side. It was at a distance. It is wrong to suggest that I depose falsely.”

6. It is evident that late Sh. Jagtar Singh was crossing over the National Highway which has separate lanes for the traffic going in a particular direction. In other words, he was crossing the National Highway dual carriage-way divided by a diversion wall. When Sh. Jagtar Singh jumped over the diversion wall to go to the other side of the dual carriage-way, the unfortunate accident happened. The question is 'Was the deceased, who had jumped over the diversion wall although there was no passage, a tortfeasor or not? Another question can also be that 'Can a driver of a vehicle travelling on a dual carriage way of National Highway be held liable for rash and negligent driving particularly when a pedestrian after jumping over the diversion wall constructed for prohibiting the pedestrians from crossing the National Highway', appears on the road, unexpectedly?'

7. The Tribunal is required to return the finding of rash and

negligent driving on preponderance of probabilities. Undoubtedly, the

claimants are not required to prove their case beyond the shadow of reasonable doubt as per the standard required in the criminal cases. However, in any case, the claimants are required to lead evidence to fulfill the parameters of standard of proof required for proving the preponderance of probabilities as required in civil cases. In the present case, the Tribunal has held the driver of the truck to be rash and negligent on the ground that when the accident took place, one leg of Sh. Jagtar Singh was on the divider whereas the second leg was on the road. The Tribunal has held that since Sh. Jagtar Singh was in the process of jumping over the divider, therefore, the driver of the truck was rash and negligent.

8. In the considered opinion of this Court, such a finding is completely erroneous. Once it is an admitted fact that late Sh. Jagtar Singh was in the process of jumping over the diversion/road divider wall to cross over to the other side of the road, then, he was required to be vigilant while crossing. First and foremost, as a man of ordinary prudence, a person is expected to cross the road from a proper passage. Sh. Harcharan Singh while appearing as CW7 has admitted that no proper passage which is safe and secure is provided to cross the road, at the place of the occurrence of the said accident. He admitted that there is a service lane on both sides of the dual carriage-way. Thus, in fact, there are 4 lanes going parallel to each other.

Late Sh. Jagtar Singh not only crossed one lane of the National Highway but

had also crossed diversion wall constructed on the road divider by jumping over it. A driver of a heavy duty vehicle travelling in the normal course of his journey on a National Highway cannot be held liable if a pedestrian suddenly appears on the road particularly when no separate passage has been provided to the pedestrian to cross the road safely at the relevant place. Moreover, it is evident that the driver of the truck did not get any opportunity to stop the vehicle as late Sh. Jagtar Singh had jumped over the diversion wall. Sh. Harcharan Singh also admits that when Sh. Jagtar Singh was crossing the National Highway, the bus on which he was expected to board was seen coming on the other side. Inference can be drawn that Late Sh. Jagtar Singh was in a hurry to cross over the road, which resulted in ignoring the precautions he was required to take.

9. The claimants have filed an application for permission to lead additional evidence. The claimants want the Court to believe that late Sh. Jagtar Singh was in the service lane at the time of accident. The aforesaid stand is against the deposition of the alleged eyewitness examined by claimants themselves. In addition, from a bare perusal of the photographs, it is apparent that there is a road dividing wall of a reasonable height with an iron fence to stop the pedestrians to cross over to the other side. In such circumstances, Sh. Jagtar Singh himself was a tort-feaser, who did not care about the road divider and tried to cross the road anyway.

10. Hence, the appeal is allowed while setting aside the award passed by the Tribunal.

11. All the pending miscellaneous application(s), if any, are also disposed of.

09.11.2021
ashok
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE