IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3010 of 2003 with
XOBJC-3-CII-2004
Date of Decision : 25.07.2022

National Insurance Company Ltd.

.....Appellant

vs.

Durga Devi and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Aseem Aggarwal, Advocate
for the appellant/Insurance Company.

Mr. Mohit Rana, Advocate for
Mr. Sunil Panwar, Advocate
for respondents No.1 to 4/cross-objectors.

PANKAJ JAIN, J.

Insurer is in appeal disputing the liability.

2. The claimants have preferred cross-objections seeking modification of the award praying for enhancement of compensation.

3. The claim petition was filed under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 by legal heirs of the deceased-Deva Nand, who is stated to have died in a motor-vehicular accident dated 29th April, 2001, seeking compensation.

4. As per the claim petition while deceased was returning from village Sultanpur, he was hit by Jeep No.HR-16A-9173. It was being driven by respondent No.2 in a rash and negligent manner. Deceased was crushed and sustained multiple injuries in the accident. He was taken to

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General Hospital, Hansi where he succumbed to the injuries.

5. Insured and the Insurer filed separate written statements denying the accident. On the basis of the pleadings of the parties, following issues were framed by the Tribunal :-

> *"1. Whether the accident in question took place due to rash and negligent driving of Jeep No.HR-16A-9173 by Karamvir respondent No.2? OPP*
> *2. Whether the applicants are entitled to any compensation on account of death of Deva Nand, if so, how much and from whom ? OPP*
> *3. Whether the Insurance Company is liable to make the payment of compensation, if awarded, or not? OPR*
> *4. Relief."*

6. Ld. Counsel for the appellant asserts that the finding recorded by the Tribunal on Issue No.1 is perverse. He submits that the accident took place on 29th of April, 2001. FIR was lodged on 30th of April, 2001. The details of the offending vehicle/driver do not figure in the FIR. One eye-witness Wazir Singh was planted. His version of having chased the offending vehicle on bicycle for about one kilometer and having read the number of vehicle is highly improbable. He further claims that there is a collusion between the claimants and the owner along with driver of the vehicle. He, thus, asserts that involvement of the offending vehicle having not been proved, the Tribunal erred in recording finding on Issue No.1 in favour of the claimants and against the appellant.

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7. Ld. Counsel for respondents No.1 to 4/cross-objectors asserts that so far as finding on Issue No.1 is concerned, the Tribunal has returned a well reasoned finding after analyzing the evidence threadbare. However, he seeks modification of the Award *qua* Issue No.2. It has been claimed that nothing has been paid on account of future prospects. He further claims that even the income of the deceased has not been properly assessed. The deduction of 1/4th should have been applied instead of 1/3rd, Keeping in view the large family of the deceased. He further claims that the multiplier of 15 should have been applied while calculating compensation instead of 13. Nothing has been paid under the conventional heads apart from a meager amount of Rs.5,000/- on account of funeral expenses.

8. I have heard Ld. Counsel for the parties and have carefully gone through the evidence on record.

9. So far as finding on Issue No.1 is concerned, Ld. Tribunal has taken a cumulative effect of the evidence on record. Tribunal has appreciated that even though the number of the offending vehicle was not mentioned in FIR (Exhibit P-6) but the version of PW-5 Wazir Singh, who happens to be the resident of Village Umra where the accident took place cannot be said to be improbable.

10. Motor Vehicles Act is a benevolent legislation. Certain guiding principles have evolved over the years. They form bedrock for evaluating evidence and while dealing with claim petitions under the Motor Vehicles

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Act. The same need to be reiterated.

(i) Tribunals are free to evolve their procedure and they are not guided strictly by the principles of Civil Procedure Code.

(ii) The test in the claim petitions is preponderance of probabilities. Claimant is not required to prove the accident beyond doubt as required under the criminal proceedings. (**Bimla Devi vs. Himachal RTC (2009) 13 SCC 530)**

(iii) Absence or non-production of FIR or the result of criminal trial does not have any bearing on the result of claim petition. (**Minu Rout vs. Satya Pradyumna Mohapatra, (2013) 10 SCC 695**).

(iv) Production of FIR and the report filed under Section 173 Cr.P.C. indicting the offending vehicle in the *prima facie* evidence to prove the accident. (**N.K.V. Bros (P) Ltd. vs. M. Karumai Ammal and ors., 1980(3) SCC 457**)

(v) Examination of some best eye-witness is not the requirement in the motor-accident claims. Non-examination thereof is not fatal. (**Anita Sharma vs. New India Assurance Co. Ltd. (2021) 1 SCC 171**).

(vi) Site Plan prepared by the Investigating Agency alone is not sufficient to prove the plea of contributory negligence. Onus to prove plea of negligence always lies on the respondent. (**Sunita and others vs. Rajasthan State Road Transport Co. & Anr., 2020(13) SCC 486**)

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(vii) Some discrepancies are bound to appear in the ocular evidence as memory fades with the passage of time. (**Ram Naresh vs. State of U.P., (2010) 15 SCC 252**).

(viii) Where best evidence has been withheld by the owner of the offending vehicle, adverse inference has to be drawn. (**Smt. Laxmibai vs. Karnataka State Road Transport, (2001) 5 SCC 59**)

(ix) Admission by owner of involvement of vehicle is not binding upon the driver of the vehicle. (**Saroj and others vs. Het Lal and others. (2011) 1 SCC 388**)

(x) Failure to cross-examine the witness despite opportunity having been provided amounts to tacit admission of the testimony of the said witness. (**Anita Sharma vs. New India Assurance Co. Ltd. (2021) 1 SCC 171**)

(xi) Delay in lodging of FIR cannot be a ground to deny the claimant's case when the same is made out from the other evidence brought on record. (**Jaswant Singh vs. State of Haryana and others – FAO No.685 of 1986 decided on 27.04.2001**)

(xii) Mere non-lodging of FIR or report by the injured is no ground to reject the claim petition when the other evidence is satisfactory to prove the claim.(**Ravi vs. Badrinarayan, (2011) 4 SCC 693**)

(xiii) Whole evidence has to be considered for recording finding. Evidence should not be read in isolated parts. Similarly,

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hairsplitting of a statement made by the witness is not permissible. Whole testimony has to be seen not isolated sentences. (**Sunil Kumar Sambhudayal Gupta and ors. vs. State of Maharashtra, (2010 (13) SCC 657**).

11. Evidence recorded by the Ld. Tribunal when tested on the touchstone of aforesaid principles of evaluating evidence in the enquiry contemplated under the Motor Vehicles Act, 1988, no fault can be found with the same. Trial Court while analyzing the evidence on record held that :-

> "The learned counsel for the respondents have argued that neither the name of the driver nor the registration number of the Jeep has been mentioned in the FIR Ex. P-27, and, thus, no liability can be fastened on the respondents. The contention is meritless. The FIR had been lodged by Suresh Kumar the brother of deceased Deva Nand on the same night of 1.15 A.M. intimating that Deva Nand on account of the accident. The registration number of the offending vehicle as well as the name of the driver of the offending vehicle could not be reflected in the FIR since Suresh Kumar was not the eye witness. His statement suggests that on receipt of information at 11.30 P.M., he, alongwith his brother Radhey Sham, went to the hospital and found his brother Deva Nand having died on account of the accident. In Dr. B.D. Bagri Vs. Daulat Ram and others. 1998 A.C.J. 1303, it has been held that the Tribunal cannot draw any inference upon the contents of the FIR to foist liability on the driver of the vehicle involved in the accident. The Tribunal has to decide the matter

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on the strength of the evidence led in the case. In Virat Sama Vs. Mohan Lal and others, 1994 (1) PLR 82, it has been held that the statements before the Tribunal are made of solemn affirmation whereas the FIR is not lodged on the solemn affirmation. The statement of PW-6 Suresh Kumar suggests that after 2-3/4 months later him Wazir Singh met him and enquired about the welfare of his brother Deva Nand and when he told that he had died as unknown vehicle had hit him and then he narrated that he was present at the spot and had witnessed the accident having been caused by a jeep which was driven in a rash and negligent manner and he could not inform as his own brother was ailing and he had to take him to the hospital for treatment. The learned counsel for the respondents have also assailed the testimony of PW-5 Wazir Singh on the ground that he remained mum for 2-3/4 months and as such, he is only a got up witness and no reliance can be placed on his testimony. The contention is again meritless. It is not that Deva Nand was not known to PW-5 Wazir Singh. The cross-examination of PW-6 Suresh Kumar suggests that Wazir Singh is known to him and had also been visiting his brother Deva Nand when he was posted as Kanungo at Bansi. The statement of PW-5 Wazir Singh suggests that on account of the accident Deva Nand had not died at the spot and was removed to the hospital and as such, it is quite obvious that he was not aware of the death of Deva Nand in the hospital and felt no necessity or urgency to inform the relations of Deva Nand. Since as is apparent from his cross-examination he had to go to PGIMS Rohtak, in connection with the ailment of his brother and then he accompanied him to Ganga Ran Hospital. It is only that by chance he met PW-6 Suresh Kumar near the Dharamshala of Umra and revealed the entire sequence of the

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accident to PW-6 Suresh Kumar. PW-5 Wazir Singh is resident of village Umra and as such, his presence near the Dharanshala of Village Umra is not unnatural. His statement suggests that Deva Nand was driving his scooter at normal speed and on the correct side of the road and Jeep No. HR-16-A-9173 which had come from behind was driven in a rash and negligent manner and hit against the scooter of Deva Nand on account of which Deva Nand fell down and he had followed the jeep for about 3 killas and noted the registration number of the jeep in the head light of a vehicle coming from the side of Umra but the driver of the jeep sped away towards Umra. PW-5 Wazir Singh is an independent witness. He has no axe to grind in the sense that neither any enmity or ill-will either has been proved or suggested against Karamvir Singh, the driver of Jeep No. HR-16-A-9173. He would be the last implicate him falsely. The Insurance Company has also failed to prove any collusion between the claimants and their witnesses with other respondents. PW-6 Suresh Kumar obviously on the information by PW-5 Wazir Singh informed the police and got recorded his statement from him before the then HC Chand Singh. The case was investigated. The statement of PW-7 now ASI Chand Singh suggests that he took over the investigation of the case and also recorded the statement of Wazir Singh and Karamvir was arrested. It implies that during investigation, the police had also found Karamvir having caused the accident while driving Jeep No. HR-16-A- 9173 and has also filed a challan against him and proved the copy of the same Ex.P-8. Apart from the statement of solitary witness Wazir Singh, the statement of PW-7 ASI Chand Singh suggests that there is also evidence of extra judicial confession made by the accused before one Rajinder

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Singh whose statement was also recorded under Section 161 Cr.P.C. Karamvir is also facing criminal trial as is evident from the statement of Dheeraj Jain, Ahlmad in the court of SDJM, Hansi. Thus, there is a strong presumption of his causing the accident. Further, respondents no. 1 and 2 in their written statement do not deny the accident. Their stand is that no accident had taken place with Jeep No. HR-16-A-9173, rather the accident had taken place due to the negligence of the deceased himself. This implies that they do not deny the accident. Karamvir, the driver of the jeep, admits that the case was registered against him, the charge has been framed and he facing criminal trial. Had it been a false case, it was expected of him to move representation to the higher authorities. He though has stated in cross-examination that he moved an application for the re-investigation of the case to the S.P., Hisar wherein no action had been taken but not placed on the record the copy of the said application and as such, the said plea is an after-thought. He though in cross-examination has denied having caused the accident but in his examination-in-chief has not stated even a single word that he had not caused the accident. Therefore, to my mind, his evidence is in a twisting nature, rather the statement of PW-5 Wazir Singh who is the solitary witness of the accident is in a natural way. Therefore, the conclusion can easily be drawn that the accident had occurred due to the rash and negligent driving of Jeep No. HR-16-A-9173 driven by Karamvir respondent No. 2. This issue is decided accordingly in favour of the claimants and against the respondents."

12. The test is not 'beyond benefit of doubt' but is 'preponderance

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of probabilities'. The cumulative effect of the evidence on record has to be seen. The reason that number of the offending vehicle does not find mention in the FIR cannot be a sufficient ground to absolve the offending vehicle of its liability. When there is other cogent evidence on record which proves the involvement of a vehicle in the accident, non-mentioning thereof in FIR has no bearing on claim under the Motor Vehicles Act. In the present case, PW-5 Wazir Singh is an independent witness. He is resident of the village where the accident took place. His testimony can't be said to be improbable as suggested by counsel for the appellant. He withstood onslaught of lengthy cross-examination. He has fully explained his absence from the scene after accident. There is no suggestion put to him that he was not present at the spot. It also needs to be noticed that the positive assertion made by respondents No.1 and 2 in the written statement filed before the Tribunal was to the following effect :-

> *"24. That the contents of para No.24 of the petition are wrong not admitted and hence denied. It is denied that the alleged accident took place due to the negligence of respondent No.2 Karamvir Singh driver of jeep bearing No. HR-16A/9173, rather the accident took place due to the negligence of the deceased himself. The witness is planted one. This is all a concocted and made up story. Rest of the contents of this para are specifically denied."*

13. Thus, nothing wrong can be found with the finding recorded by

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the Tribunal on Issue No.1. Consequently, the same is maintained.

14. Coming on to the finding recorded on Issue No.2, no fault can be found with the assessment of income which is based upon documentary evidence. Tribunal has rightly assessed the annual income of the deceased to be Rs.113011/-. Since, the family of the deceased included two children, wife and a mother, Tribunal ought to have applied deduction of 1/4th instead of 1/3rd. As per law laid down by the Apex Court in '**Smt. Sarla Verma & others vs. Delhi Transport Corporation & another' (2009) 6 SCC 121** multiplier of **14** will be applicable keeping in view age of the deceased. As per dictum of law laid down in '**National Insurance Company Limited vs. Pranay Sethi and others', (2017) 16 SCC 680** future prospects of 40% needs to be added. The claimants are also entitled for Rs.44,000/- each for loss of consortium. **Rs.15,000**/- is awarded for loss of estate and funeral expenses of Rs.5,000/- awarded by the Tribunal are further enhanced to Rs.15,000/-. The amount awarded shall be apportioned as per Para No.19 of the Award passed by the Tribunal i.e., widow shall be entitled for 40% of the awarded amount, both the sons will be entitled for 25% each, and rest of the 10% will be paid to the mother of the deceased. The claimants shall also be entitled for interest @ 9% per annum from the date of filing of the petition till its actual realization.

15. Needless to say that any amount already paid to the claimants/respondents shall be set off.

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16. As a sequel of the discussion held herein above, the appeal preferred by the Insurer is dismissed. Cross-objections filed by the claimants/respondents No.1 to 4 are partly allowed in the aforesaid terms.

July 25, 2022 **(PANKAJ JAIN)**
Dpr **JUDGE**

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

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