

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

FAO-1757-2020 (O&M)

CM-5279-CII-2020

Date of Decision: 02.03.2022

UNIVERSAL SOMPO GENERAL INSURANCE COMPANY LTD.

...Appellant

Versus

BANITA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Amit Kundra, Advocate
for the appellant.

ARUN MONGA, J. (ORAL)

Aggrieved with the award dated 21.11.2019 rendered by Motor Accidents Claims Tribunal, Jhajjar, Insurance Company has preferred the instant appeal.

2. Briefly stated, the facts of the case are that on the intervening night of 17/18.09.2017 one Sh. Jagbir (since deceased) was coming from Gurugram to his house at Village Chhara via Bahadurgarh in his car make Wagon-R bearing No.HR-63C-9135, which was being driven by him at a moderate speed. When he reached under-by pass flyover near PDM College, Bahadurgarh, a Truck bearing registration No.HR-38T-7105, which was being driven by respondent No.1 in a rash and negligent manner, came from the side of Beri and hit the car of deceased Jagbir. As a result, his car caught fire and Jagbir himself could not come out from the car and died due to burning. Respondent no.1 fled away from the spot after leaving the offending vehicle there. The dead body of deceased Jagbir was removed to General Hospital, Bahadurgarh, which was thereafter referred to PGIMS,

Rohtak, where postmortem examination was conducted. Accordingly, FIR No.579 dated 18.09.2017 under Sections 279 and 304-A of IPC was registered at Police Station Sadar, Bahadurgarh on the statement of one Satbir S/o Ram Kishan. The claim petition claiming compensation of Rs.50 lakh was filed by the claimants.

Upon notice, respondents No.1 and 2 appeared and filed their separate written statement denying that accident was caused due to rash and negligent driving of vehicle No.HR-38T-7105. It was further submitted that the insurance company is liable to pay the amount of compensation.

Respondent no.3-Insurance Company filed separate written statement taking preliminary objections and denied the accident as well as pleadings of the petitioners.

3. From the pleadings of parties, following issues were framed by the learned Motor Accidents Claims Tribunal :-

- “1. Whether the accident, resulting into the death of Jagbir son of Ram Kishan, had taken place in the intervening night of 17/18.9.2017, at Beri-Bahadurgarh Road, under bye-pass flyover, near PDM College, due to rash and negligent driving of Truck bearing registration No.HR-38T-7105 by respondent No.1, as alleged? OPP*
- 2. If Issue No.1 is proved in affirmative, whether the petitioners are entitled to compensation, if so, to what amount and from whom? OPP.*
- 3. Whether the petition is not maintainable in the present form? OPR*
- 4. Whether respondent No.1 was not holding a valid and effective driving license on the date of alleged accident, if so, its effect? OPR-3.*
- 5. Whether respondent no.2 had contravened the terms and conditions of insurance policy, if so, its effect? OPR-3.*
- 6. Relief.”*

4. Parties led their evidence. On the basis of evidence adduced by both the parties, Issues No.1 and 3 were decided in favour of petitioners.

Issue No.2 was partly decided in favour of the petitioners. With regard to

Issues No.4 and 5, it was held that there is no violation of terms and conditions of Insurance policy. Accordingly, vide award dated 21.11.2019, a total compensation of Rs.15,39,568/- was awarded to the claimants and respondents No.1, 2 and 3 were held jointly and severally liable to pay the amount of compensation and were directed to be indemnified by respondent No.3-Insurance Company.

5. I have heard learned counsel for the appellant and gone through the case file.

6. The learned Tribunal allowed the claim *interalia*, premised on the following reasoning :-

“14. After considering the rival submissions of learned counsel for the parties and perusal of the evidence available on record, it is observed that admittedly, the accident in question took place in the night of 17/18.9.2017 and both the vehicles i.e. Car of the deceased and the offending Truck burnt in it. It is also not in dispute that deceased Jagbir also burnt in the Car after the accident. In this case, FIR Ex.P8 was registered on the statement of PW2 Satbir. Though, he had not witnessed the accident, but he has explained that after getting the information, he along with other persons reached at the spot and saw that both the vehicles were burning and his brother Jagbir also burnt in the same. However, the driver of the offending Truck was not present there. PW3 ASI Raj Kumar was the Investigating Officer of the criminal case, who has specifically deposed that on getting the information about the accident, he reached at the place of accident and found that the offending Truck as well as the Car were in the fire and the driver of the offending Truck had already fled away from the spot, whereas the driver of the Car burnt in the same. He also specifically stated that the accident in question took place due to the negligence of the offending Truck by its driver. He has also specifically stated in his cross-examination that there was a speed-breaker prior to the place of accident and that the offending Truck had come on the road leads to Bahadurgarh after alighting from the flyover. I have also gone through the site-plan Ex.PX, which makes it clear that the place where the accident took place, was on left side of the road leading from Bahadurgarh to Beri and just underneath the flyover. After taking into consideration the testimony of PW3 ASI Raj Kumar coupled with the site-plan Ex.PX, it stands established on record that respondent No.1, who had come on the road leading from Bahadurgarh to Beri in a negligent manner and hit the car

of the deceased. Admittedly, respondent No.1 is facing criminal trial for causing the accident in question which is clear from copy of challan Ex.P9.

15. Moreover, neither respondent No.1 has appeared in the witness box nor respondents No.1 and 2 have examined any other person alleged to be present at the place of accident to depose either that the accident did not take place due to the rash and negligent driving of the offending Truck by respondent No.1. Even, respondent no.1 did not make any complaint to S.P. Jhajjar or SHO, Police Station City, Bahadurgarh to deny his negligence and with regard to his false implication in the criminal case. Thus, respondents No.1 to 3 have failed to rebut the evidence of the petitioners which having gone virtually un-rebutted and un-challenged ought to have been relied and acted upon by the Tribunal.

16. Keeping in view the above oral as well as documentary evidence available on record, this Tribunal is of the view that the material produced on record is sufficient to hold that it was respondent No.1 who was driving the offending vehicle i.e. Truck bearing registration No.HR-38T-7105 in rash and negligent manner and caused the accident in question resulting into the death of Jagbir. With these observations, issue no.1 is accordingly decided in favour of petitioners.”

7. I am unable to persuade myself with the arguments of learned counsel for the appellant that at worst it was a case of contributory negligence on the part of the deceased himself and the driver of the offending vehicle, which collided head-on with the vehicle of the deceased-victim and, therefore, the compensation has to be contributory. The fallacy of the argument is writ large from the fact that neither any contributory negligence is established nor can it be assumed by surmises in the facts and circumstances of the case. On that short premise, no grounds to interfere.

8. Furthermore, if the argument of learned counsel for the appellant is to be accepted, it would mean that in every head-on accident involving two vehicles, a legal presumption can be drawn that both the drivers were at fault. It cannot be so in every case and it cannot be also determined as a straitjacket formula, as has been canvassed.

9. As regards the other argument that there was no eye-witness and there is no FIR, the same has already been dealt with in the impugned award by the learned Tribunal and findings qua the same have been rendered which are based on corroborating as well as other primary evidence adduced.
10. No other ground has been urged.
11. Dismissed.
12. Pending application, if any, shall also stand disposed of.

March 02, 2022

gurpreet

(ARUN MONGA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No