

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

**215**

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**FAO No. 1054 of 2022 (O & M) and  
Cross Objections No. 75 of 2022 (O & M)  
Date of decision : 9.11.2022**

**Tata AIG General Insurance Company Limited, Chandigarh**

**.....Appellant**

**Vs.**

**Dev Kaur and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

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

Mr. Ravinder Arora, Advocate, for respondents no. 1 to 4

Mr. Vipul Sharma, Advocate, for respondents no.5 and 6

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**TRIBHUVAN DAHIYA, J. (Oral)**

1. This is an appeal filed by the Insurance company against the award dated 16.11.2021 passed by the Motor Accident Claims Tribunal, SAS Nagar (in short 'the Tribunal').

2. The facts in brief are, the claim petition was filed under section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') on account of death of Satnam Singh in a motor vehicular accident dated 12.6.2019. The deceased, after finishing his personal work, was going back towards his village along with Nasib Singh on motorcycle bearing registration number PB65-AU-6270. The deceased was pillion rider on the said motorcycle. Rajinder Singh and Ajmer Singh were following them on their own motorcycle bearing registration no. PB65-AU-5228. Respondent no.5, Nasib Singh, who was driving his motorcycle in rash and negligent manner, lost control and struck it against a

fallen tree on the road. Due to impact of the accident, Satnam Singh received multiple grievous injuries on his head, chest and other parts of the body. He was shifted to PGIMER, Chandigarh, where he succumbed to injuries on 19.6.2019.

3. The Tribunal after appreciating the evidence on record, awarded compensation of Rs.18,84,400/-to the claimants/respondents no.1 to 4 (wife and minor children of the deceased).

4. Learned counsel for the appellant contends that it is a case of false involvement of the vehicle in the accident, as the deceased was brother-in-law of respondent no.5-driver. At the time of getting Daily Diary Report (DDR) recorded in the police station, respondent no.5 had stated that no one was at fault in causing the accident. But later, the claimants examined an eye witness, Ajmer Singh as PW-2, whose presence at the spot was highly doubtful. He further submitted that no FIR pursuant to the DDR was recorded by the police, nor the fact of motorcycle having been damaged could be established on record. All these facts, as per the learned counsel, established that the vehicle was falsely involved in the accident to file the insurance claim.

5. Learned counsel for the parties have been heard and record of the Tribunal perused.

6. The DDR (Ex.R-4) in question was recorded by the police only on 19.6.2019, the day Satnam Singh died. A perusal of the post mortem report (Ex.P-6) dated 19.6.2019 shows that the deceased's body was brought to hospital by the police. It is further recorded in the report that as per information provided by the police, it was a case of "*roadside accident on 12.6.2019 at about 7:30 p.m. near Bapu Asha Ram Ashram, Village Syonk, District SAS Nagar, Punjab, when the decesed was travelling on a motor cycle as pillion*

*rider and was hit against a fallen tree on the road. He was rushed to PGIMER, Chandigarh.*” The police were, therefore, aware of the accident having taken place on 12.6.2019. In case they did not lodge FIR on that basis, the respondents/claimants could not be faulted for the same. Further, the eye witness PW-2 was cross-examined at length. But the respondents could not establish anything in their favour. Rather, he had clearly stated that a complaint was given to the police but they did not lodge FIR against respondent no.1. He duly proved the factum of accident involving the motorcycle in question and also negligence of the driver. It is a case where respondent no.5-Driver of the offending motorcycle did not step into the witness box to controvert the eye witness. Besides, RW-1 ASI Mohan Singh, proved on record General Diary No. 16 (GD) as Ex.R-4. He also deposed that no FIR was lodged against anybody with respect to the accident. Based on this evidence, the Tribunal held that the accident in question took place on account of rash and negligent driving of respondent no.5, and there was nothing to disbelieve the un-rebutted and un-challenged evidence adduced by the respondents/claimants in that regard.

7. Merely because FIR was not lodged after recording DDR, is no ground to disbelieve the unchallenged testimony of the eye witness coupled with other evidence proved on record, as discussed above. Also because respondent no.5- driver was brother-in-law of the deceased, was no ground to disbelieve the accident in question caused on account of rash and negligent driving of the motorcycle; this stood proved on record by the testimony of PW-2, the eye-witness. Besides, the two relatives can very well travel together riding the same motorcycle, and one of them can be negligent in driving. Only because they happen to be a relatives, that in itself cannot be a ground to disbelieve the accident or to say that the motorcycle was planted only to get compensation

from the Insurance company. Therefore, there is no infirmity in the findings recorded by the Tribunal on Issue no.1 holding the accident to have been caused on account of rash and negligent driving of the offending motorcycle by respondent no.1-Nasib Singh, and making the appellant Insurance company liable to pay the compensation awarded.

8. The Tribunal's findings are based on preponderance of probabilities. Law on this aspect has been settled by the Supreme Court in ***Sunita and others vs. Rajasthan State Road Transport Corporation and another*, (2020) 13 SCC 486**, that in a motor accident claim case, once the foundational fact, i.e., the actual occurrence of the accident has been established, the Tribunal's role after that would be to calculate the quantum of just compensation if accident had taken place due to negligence of the driver. While deciding the cases, the standard of proof to be borne in mind must be of 'preponderance of probability'. The relevant part of para No.25 of the judgment reads as under:

25. .... It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal case.

9. So far as cross-objections filed by the respondents/claimants seeking enhancement of compensation are concerned, the only argument raised by learned counsel for the claimants/cross-objectors is that the amount of

consortium awarded to the claimants is not as per law laid down by the Supreme Court in *National Insurance Company Limited v. Pranay Sethi and others*; 2017 (4) RCR (Civil) 1009.

10. A perusal of the Tribunal's award shows that an amount of Rs.40,000/-has been awarded as consortium only to respondent no.1 – claimant wife and not to the other respondents/claimants no.2 to 4 (minor children). It has been held by the Supreme Court that each of the claimant is entitled to Rs.40,000/-as consortium, which needs to be enhanced by 10% after every 3 years.

11. Therefore, the Tribunal's award dated 16.11.2021 is modified only to the extent that each of the claimants shall be entitled to an amount of consortium at the rate of of Rs.44,000/-. Accordingly, the compensation awarded is enhanced by Rs. 1,36,000/- ( $44,000 \times 3 = 1,32,000$ ) for claimants no.2 to 4, and Rs.4000/- for claimant no.1. Rest of the award including the share of claimants as well as the manner of disbursal of compensation shall remain undisturbed.

12. The Insurance company's appeal is dismissed and the cross-objections are disposed of in the aforesaid terms.

13. Pending miscellaneous application(s), if any, stands disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)  
JUDGE

9.11.2022  
Ashwani

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