

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

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(1)

FAO-33-2021 (O&M)

Date of decision: 27.10.2022

Oriental Insurance Co. Ltd.

.....Appellant

Versus

Pushpa Devi and others

.....Respondents

(2)

FAO-35-2021 (O&M)

Date of decision: 27.10.2022

Oriental Insurance Co. Ltd.

.....Appellant

Versus

Satya Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Harsh Aggarwal, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondents No.1 and 2 in both the appeals.

MANJARI NEHRU KAUL, J. (ORAL)

This order shall dispose of the above referred two appeals as they arise out of the same accident.

The insurance company has laid a challenge to the following compensation awarded vide awards dated 03.01.2020 passed by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') on account of a Motor Vehicular Accident which took place on the intervening night of 11.05.2018 and 12.05.2018 wherein Suresh Kumar (hereinafter referred to as 'deceased No.1') and Munish Kumar @ Manish Kumar (hereinafter referred to as 'deceased No.2') lost their lives:-

Compensation in respect of deceased No.1

Sr. No.	Head	Amount
1.	Monthly Income	Rs.8,000/-
2.	Annual Income	Rs.96,000/-
3.	Future Prospects (40%)	Rs.38,400/-
4.	Total Annual Income	Rs.1,34,400/-
5.	Deduction towards personal expenses (½)	Rs.67,200/-
6.	Income after deduction	Rs.67,200/-
7.	Compensation after applying multiplier of '18'	Rs.12,09,600/-
8.	Loss of Consortium	Rs.40,000/-
9.	Loss of Estate	Rs.15,000/-
10.	Funeral expenses	Rs.15,000/-
	Total Compensation	Rs.12,79,600/-

Compensation in respect of deceased No.2

Sr. No.	Head	Amount
1.	Monthly Income	Rs.9,000/-
2.	Annual Income	Rs.1,08,000/-
3.	Future Prospects (40%)	Rs.43,200/-
4.	Total Annual Income	Rs.1,51,200/-
5.	Deduction towards personal expenses (½)	Rs.75,600/-
6.	Income after deduction	Rs.75,600/-
7.	Compensation after applying multiplier of '17'	Rs.12,85,200/-
8.	Loss of Consortium	Rs.40,000/-
9.	Loss of Estate	Rs.15,000/-
10.	Funeral expenses	Rs.15,000/-
	Total Compensation	Rs.13,55,200/-

As per the pleaded case of the claimants, on 11.05.2018 at about 11:55 P.M. when deceased No.1 was riding his motorcycle from Baddi towards Manpura along with deceased No.2 and Gaurav @

Navin Kumar, a car bearing registration No.CH01-AY-2883 (hereinafter referred to as 'the offending vehicle') being driven rashly and negligently driven by respondent No.3-Pardeep Pal came from opposite direction and collided with the motorcycle of the deceased. On account of the collision, all three occupants of the motorcycle were dragged for about 15 metres as a result of which they all sustained serious injuries. Deceased No.1 and No.2 died at the spot.

Learned counsel for the appellant insurance company vehemently contends that the impugned awards are patently erroneous as they had been passed by the Tribunal without appreciating the evidence on record. He submits that the claimants had failed to examine any independent witness to prove the negligence on the part of the offending vehicle and even the alleged eye witness Daljeet, who lodged the FIR after the accident in question did not step into the witness box. He further submits that the Tribunal failed to appreciate that since it was a case of head on collision, drivers of both the vehicles i.e. the offending vehicle as well as the rider of the motorcycle on which the deceased were travelling, were equally negligent in causing the accident in question. He still further submits that the factum of contributory negligence is clearly evident from the testimony of RW-1 Dr. Ashok Kumar, who categorically deposed that deceased No.1 had consumed 158.63% mg of liquor while deceased No.2 had consumed 173.64% mg liquor which admittedly was much beyond the permissible limit of 30% mg.

Learned counsel furthermore submits that Pardeep Kumar

and Ritu Raj in their statements recorded under Section 161 of the Cr.P.C. (RW-2/4 and RW-2/5) had stated that deceased No.1 was driving the motorcycle in a rash and negligent manner. Hence, in the above circumstances, it was evident that the accident in question had occurred on account of the deceased being under the influence of liquor or in the alternative at best it was a case of contributory negligence.

Per contra, learned counsel appearing for the respondents/claimants while controverting the submissions made by the counsel opposite, submits that the appellant insurance company in their written statement had nowhere taken the ground of contributory negligence and even the factum of deceased No.1 and No.2 being in an inebriated state on account of consumption of alcohol had not even been pleaded. Therefore, it was urged that any evidence which was beyond pleadings could not be considered. He further submits that statements recorded under Section 161 of the Cr.P.C. of Pardeep Kumar and Ritu Raj (RW-2/4 and RW-2/5) would in any case have no bearing on the claim petitions filed by the claimants. Learned counsel contends that the best witness to controvert the factum of the negligence of the driver of the offending vehicle would have been the driver himself, however, he did not even step into the witness box as a result of which the Tribunal rightly drew an adverse inference against him. He, thus, prayed for dismissal of the appeals.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court concurs with the submissions made by the

learned counsel for the respondents/claimants that any evidence beyond pleadings cannot be considered and, thus, would be of no relevance. Learned counsel for the insurance company has not been able to controvert the fact that the insurance company in its written statement has not even taken the plea of contributory negligence or that the accident had occurred due to the two deceased being under intoxication and the alcohol content found in their viscera was much beyond permissible limits. It would be relevant to notice here that the purpose of pleadings is to enable the parties to know each other's pleaded case so as not to take either of them by surprise. No doubt, strict rules of pleadings would not apply to the proceedings before the Tribunal, however, nobody can be allowed to set up a case by leading such evidence which is at complete variance with their pleadings.

In the instant case, the evidence led by the insurance company was not in conformity with the defence set up by it in its written statement. It needs to be reiterated that the statements made under Section 161 of the Cr.P.C. by Pardeep Kumar and Ritu Raj can only be used to the limited extent of contradicting the witnesses during their deposition. However, in the present case said Pardeep Kumar and Ritu Raj did not step into the witness box due to which the claimants were unable to confront them with their respective statements made under Section 161 of the Cr.P.C. Still further, the claimants examined PW Gaurav @ Naveen Kumar who was one of the occupants of the motorcycle on which the two deceased were travelling. Gaurav @ Naveen Kumar while stepping into the witness box gave a vivid

account of the manner in which the accident in question occurred and deposed in no uncertain words that the driver of the offending vehicle was negligent while driving. In the circumstances, the submissions made by the learned counsel for the insurance company that no independent witness was examined to prove negligence on the part of the offending vehicle would not in any manner be fatal to the case of the claimants, moreso, when the presence of Gaurav @ Naveen Kumar at the spot stands duly established. Furthermore, contributory negligence cannot be made out merely because three persons were travelling on the motorcycle. It was imperative upon the insurance company to show that the accident in question had occurred due to triple riding as the driver of the motorcycle had lost balance on account of the same, however, admittedly no cogent evidence was led qua the same.

As a sequel to the above, this Court does not find any merit in the appeals. Consequently, both the appeals are dismissed.

27.10.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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