

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

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FAO No.171 of 2021 (O&M)
DATE OF DECISION: 19th JANUARY, 2022

The New India Assurance Company Limited

.... Appellant

Versus

Ginni Devi and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Vinod Gupta, Advocate for the appellant.

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RAJBIR SEHRAWAT, J. (Oral)

CM-2000-CII-2021

This is an application for condonation of delay of 105 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed. The delay in filing the appeal is condoned.

Main Appeal

This appeal has been filed by the appellant-Insurance Company challenging the award dated 18.01.2020 passed by the Motor Accident Claims Tribunal, Fatehabad (for short, the Tribunal), whereby an amount of ₹12,48,520/- along with interest, from the date of filing of petition till its realization, has been awarded as compensation to the claimants.

The parties herein are being referred to as the claimants and the respondents as were referred in the claim petition filed before the Tribunal.

The brief facts, as mentioned in the award passed by the Tribunal are; that on 25.07.2017 Munna Shah along with Happy son of Kashmiri Lal had left Fatehabad city for Pali Hotel, G.T. Road, Fatehabad; on motorcycle bearing registration No.HR-22E/5160. The said motorcycle was being driven by Munna Shah and Happy was the pillion rider on the said motorcycle. Munna Shah had stopped his motorcycle in front of Pali Hotel, Fatehabad to take meal. Then all of a sudden, the bulls standing nearby started fighting and in the process; one of the bulls struck into the motorcycle of Munna Shah. Munna Shah and Happy fell down on the road. Thereafter one Pickup vehicle bearing registration No.HR-62/7515, being driven by respondent No.1 rashly and negligently and at a high speed in a zig zag manner came and struck against the body of Munna Shah and also hit Happy. Both of them sustained injuries. Lateron, Munna Shah was taken to hospital where he was declared brought dead. With these assertions, the claim petition was filed by the claimants claiming therein that the accident had taken place purely and exclusively due to the rash and negligent driving of respondent No.1. The claimants were totally dependent upon the earnings of deceased Muuna Shah, who was 26 years of age. He was working as a labourer. Accordingly, an amount of Rs.50.00 Lakh was claimed as compensation in the claim petition.

Upon notices, the respondent No.1 appeared and filed his written statements denying the contents of the claim petition. However, the factum of accident was admitted by him but it was further asserted that there was no fault on his part in the accident. Rather, the accident had taken place all of a sudden due to fight between two bulls. Respondent No.2, the insurance company, filed separate written

statement stating therein that respondent No.1 was not holding a valid and effective driving licence on the date of accident. Still further, it was asserted that no accident had taken place on the given date, time and place with the Pickup bearing registration No.HR-62/7515. Accordingly, the accident was denied altogether. Further pleading of respondent No.2 was that the accident had not taken place due to rash and negligent driving of the driver of the offending vehicle.

To prove the assertions made in the claim petition, the claimants examined witnesses, including the pillion rider, namely, Happy to substantiate their case. It was duly deposed by this witness that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.1. Other aspects were also proved by the claimants by leading relevant evidence. Accordingly, an amount of Rs.12,48,520/- was awarded as compensation by the Tribunal. On the other hand, respondents had not led any evidence whatsoever to substantiate anyone of the assertions raised in their written statements.

Arguing the case, the counsel for the appellant-insurance company, who was respondent No.2 in the claim petition, has submitted that the first version qua the accident in question had come in the DDR recorded by the police at the instance of the above said Happy. In that DDR, it has been recorded that no one was at fault for the accident. It is further submitted that the involvement of the vehicle in question itself is in doubt because it has been stated by the wife of the deceased, while appearing as a witness before the Tribunal, that the number of the offending vehicle was given to her by one Raju, however, the said Raju, while appearing as a witness before the Tribunal, has stated that he had

gone to Bihar on the day next to the day of accident. Accordingly, it is submitted that the Tribunal has gone wrong in law.

Having heard the counsel for the appellant and having perused the case file, this Court does not find any substance in the arguments of the counsel for the appellant. Undisputedly, respondent No.1 i.e. the driver of the offending vehicle had admitted the factum of the accident as such. Therefore, the argument of the counsel for the appellant that the involvement of the vehicle becomes doubtful only because the wife of the deceased has made a statement that she was told the number of the offending vehicle by Raju and Raju had gone to Bihar on the day next to the accident, is totally irrelevant. Although the factum of telling the number of the offending vehicle to the wife of the deceased by Raju is not negated by the fact that the next day Raju had gone to Bihar, however, this entire aspect is totally irrelevant when the driver of the offending vehicle himself has admitted the factum of accident as such.

The argument of the counsel for the appellant that the DDR gave the first version qua the nature of the accident and therefore, the offending vehicle was not negligent is also without any substance. It is not even in dispute that the deceased was not negligent in his driving. He had undisputedly stopped his motorcycle on the side of the road and fell on the road only because of having been hit by one of the fighting bulls. The offending vehicle came and hit against the body of Munna Shah. The eye witness has deposed as to the negligence in driving of the offending vehicle. If respondent No.2 claims no negligence in the accident on the part of the offending vehicle; then having admitted the factum of accident, it was for the respondents to lead evidence to substantiate their

assertion that the driver of the offending vehicle was not negligent. However, the driver of the offending vehicle has not even appeared as a witness before the Tribunal so as to face the cross-examination by the claimants. No other evidence has been led on file by the Insurance Company to negate the assertion of the claimants qua the negligence in driving of the offending vehicle by respondent No.1. In view of positive testimony in the form of statement of pillion rider Happy, mere recording of the DDR in a particular manner is an irrelevant fact qua the aspect of the claim petition. In fact, any criminal proceedings qua an accident are not of much relevance except to suggest the factum of an accident having taken place. Any other detail has to be claimed and proved by leading evidence in the claim petition independently. However, in the present case though the claimants have led positive evidence qua the negligence of the driver of the offending vehicle, yet the respondents have not led any evidence to rebut the same. Hence, even this argument of the counsel for the appellant is bound to be rejected.

No other argument was raised.

In view of the above, finding no merits in the present appeal, the same is dismissed.

All pending miscellaneous applications are also disposed of as such.

19th JANUARY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No