

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

FAO No.3109 of 2022 (O&M)

Date of decision: 17.08.2022

New India Assurance Company Limited

....Appellant

Versus

Kitabo and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.K. Bashamboo, Advocate
for the appellant.

ARVIND SINGH SANGWAN J.

Challenge in this appeal filed by the appellant/insurance company is to the award dated 04.02.2022 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter to be referred as 'the Tribuna'), vide which on account of death of Lahna Singh, a compensation of Rs.30,45,360/-, is awarded in favour of the respondents (claimants/appellants therein) along with interest @ 6% per annum from the date of filing of the claim petition till its realization.

Brief facts of the case are that the claimants/respondent are the mother, father, son and daughter of the deceased Lahna Singh, who on 06.05.2021 was going from his village to Panipat on scooter bearing registration No.HR31-P-5137 and met with an accident with a motorcycle bearing registration No.HR91-A-7367, driven by respondent No.1 – Sombir in a rash and negligent manner and without following the traffic rules, which resulted into the death of Lahna

Singh, who suffered multiple bodily injuries.

The matter was reported to the police and thereafter, FIR No.292 dated 07.05.2021 under Sections 304-A, 279 IPC, was registered.

The respondents No.1 and 2 i.e. the driver and owner of the offending vehicle filed their written statement and stated that FIR has been wrongly registered against the driver/respondent No.1 as the negligence on the part of respondent No.1 was denied.

The appellant/insurance company also filed separate written statement and in para 22, which is corresponding to Para 22 of the claim petition giving details and the manner in which the accident has taken place, it is stated as under:-

“That para no.22 of the claim petition is wrong and denied. That the present accident took place due to the deceased himself who was driving his scooter bearing registration No.HR-31P-5137 in a rash and negligent manner and without observing the traffic rules. Delivery the FIR has been lodged by one day delay only to grab the amount of compensation. There is no default on the part of the driver of the offending motorcycle who was driving his motorcycle bearing No.HR-91-A-7367 while observing all the traffic rules at a moderate speed.”

Thereafter, the Tribunal framed the issues and Issue No.1 is with regard to the accident, in question as well as rash and negligent driving of respondent No.1, who was driving the motorcycle bearing registration No.HR91-A-7367. In order to prove the said issue, the claimants examined PW-1 Kitabo, mother of the deceased, who was not an eye-witness.

PW-2 Mahavir Singh also sworn his affidavit, in which he has stated that due to rash and negligent driving of respondent No.1, the accident took place, in which Lahna Singh had died.

In examination-in-chief, this witness i.e. PW-2, has specifically stated that when he reached the hospital, Lahna Singh had died due to the injuries sustained in the accident and thereafter, this witness has stated as under:-

“... Then on the next date i.e. 7.5.2021, the local police came to the hospital and the police took me and Raj Pal to the place of accident i.e. in front of Keshav College, Dupedi. After reaching the spot the vehicles involved in this accident were lying there i.e. scooter of Lahna Singh and Platina Bike bearing R.C. HR-91-A-7367. Both the vehicles were damaged.”

This witness has also stated that FIR No.292 of 2021 was registered against respondent No.1 regarding rash and negligent driving.

In cross-examination by respondents No.1 and 2, this witness i.e. PW2, this witness stated that he was not present at the spot and further denied the suggestion that respondent No.1 is falsely implicated in the case.

In cross-examination by the respondent No.3/Insurance Company, a specific question was put up, to which PW-2 replied as under:-

“....It is correct that the police took me alongwith Rajpal to the spot on 07.05.2021 at about 1:00 P.M. At that time scooter of the deceased and motorcycle in question was lying on the spot and one broken helmet was

also lying there. The police recorded my statement in the hospital on dated 07.05.2021 and on my statement FIR has been lodged.”

Thereafter, the claimants produced Ex.P-1 to Ex.P-7 in their evidence and closed the same on 05.04.2022.

The respondents No.1 and 2 i.e. driver and owner of the offending vehicle never chose to appear as a witness in the case, however, tendered the documents Ex.R-1 to Ex.R-3 and closed the evidence.

Similarly, the appellant/insurance company, who is respondent No.3 in the claim petition, also tendered Ex.R-4 and closed the evidence.

The Tribunal, thereafter, recorded a finding under Issue No.1 that the accident in question was caused due to rash and negligent driving of respondent No.1.

The operative part of the impugned award, reads as under:

“8a. To prove the fact that the respondent No.1 was driving the offending vehicle and that too in a rash and negligent manner, the claimants have also placed on record the certified copy of final report submitted by the police as envisaged under Section 173 Cr.P.C. as Ex.P1. Perusal of the same reveals to this Tribunal that during investigation, respondent No.1 was found on the wheels of the offending vehicle. He was arrested and on completion of investigation, charge-sheet was filed against him to stand trial for the commission of the offence punishable under sections 279 and 304-A of IPC while driving the offending vehicle rashly and negligently.

8b. Moreover, on the other hand, no evidence has

been led by the respondents on this issue. Hence, the above evidence led by the claimants gone un-rebutted and unchallenged. There is nothing on record to disbelieve the same more particularly when respondents No.1 and 2 in their written statement have taken a categorical stand that no such accident had taken place with the offending vehicle and a false case was registered against respondent No.1, because in these circumstances, it was incumbent upon respondent No.1 to examine himself to refute the evidence of claimants, but neither he has dared to step into the witness box on his own nor any attempt was made in this regard by respondent No.3 for the reasons best known to them, which requires to draw an adverse inference that they did not adopt any such exercise intentionally and deliberately, knowing well that respondent No.1 would not be able to face the test of his cross-examination being guilty in his mind for causing this accident. Reference in this regard may also be made to the observations made by the Hon'ble Apex Court in 1999(2) Civil Court Cases (SC)1, Ishwar Bhai C Patel alias Bachu Bhai Patel Versus Harihar Behera and another wherein it has been held that where a party does not enter in the witness box to make statement on oath in support of his pleadings, in that event an adverse inference would be drawn that what it has stated in the pleadings, is not correct. Reliance in this regard has also been placed on the case law titled as Raju Versus Sukhwinder Rai 2006 (4) RCR (Civil) 83, wherein it is held that when the driver of offending vehicle is not coming forward to depose before the court regarding his false implication in the case or does not come forward to deny his negligence, an adverse inference is liable to be drawn against him.

8c. It is now settled that registration of criminal case against the driver of the offending vehicle for causing

accident by rash and negligent driving is a prima-facie proof that the accident was a result of rashness and negligence on his part as settled in Girdhari Lal Versus Radhey Shyam & Ors. 1993 (2) PLR. 109. It is a further settled proposition of law that in motor vehicle accidents claim cases, the approach to find out who was rash and negligent in causing the accident is different from the one when a person is challaned in a criminal court on a culpable charge. The burden of proof on the petitioners is not that heavy as is required to prove a criminal charge for rash and negligent driving of the vehicle.

8d. In the present case, the fact that the police had challaned respondent No.1 for the commission of offences punishable under sections 279 and 304-A of IPC as evident from Ex.P1 i.e. the report submitted by the police under section 173 Cr.P.C., shows that the investigating agency had reached the conclusion that respondent No.1 had caused the accident by his rash and negligent driving of the offending vehicle. Respondent No.1 did not make any complaint to the concerned SHO or higher police officers regarding his false implication.

8e. Moreover, FIR finds mention the registration number as well as the type of the offending vehicle. More so, registration of FIR Ex.P3 and submission of challan Ex.P1 by the police in the court after collecting evidence against respondent No.1, prima-facie further prove involvement of the offending vehicle and causing of the accident by him while driving it in a rash and negligent manner. Reliance can be placed on the observations made by our own Hon'ble High Court in Girdhari Lal's case (Supra).

8f. In view of discussion above, finding no other option, it is held that the accident causing death of Lahna Singh occurred due to rash and negligent driving of the

offending vehicle by respondent No.1. Accordingly, this issue is decided in favour of the claimants and against the respondents.”

Lower Court record has been requisitioned and perused.

Counsel for the appellant/insurance company has assailed the findings on Issue No.1 on the ground that neither PW1 Kitabo nor PW-2 Mahavir Singh were the eye-witnesses and therefore, the Tribunal has wrongly recorded a finding that the accident was caused due to rash and negligent driving of respondent No.1. It is further submitted that the FIR was registered on 07.05.2021 i.e. on the next day of the accident and there is no explanation of delay of one day in registration of the FIR.

Counsel for the appellant has next argued that PW-2 Mahavir Singh, who is brother of the deceased Lahna Singh, in his cross-examination has admitted that he was not present at the spot and therefore, he was not an eye-witness. It is also submitted that the Tribunal has wrongly drawn an inference that since the FIR was registered by PW-2 Mahavir Singh, and report under Section 173 Cr.P.C., has been presented, therefore, the rash and negligent driving of respondent No.1 is proved. It is further argued that in the FIR, there is no mention of the offending vehicle or the name of the driver and it is only an afterthought that the police during the investigation involved respondent No.1 as driver of the offending vehicle.

Counsel for the appellant has relied upon the judgment dated 08.01.2015 passed by this Court in **FAO No.140 of 2012**, titled as ***“Reliance General Insurance Company Limited vs Munshi Singh***

and others”.

Counsel for the appellant has next argued that even on Issue No.2 while deciding the quantum of compensation, the Tribunal has wrongly assessed the income of the deceased to be Rs.15,954/- as the minimum wages prescribed by the Deputy Commissioner, Karnal whereas the Tribunal should have taken the minimum wages as prescribed by the Labour Commissioner, Haryana i.e. Rs.9,808.24/- per month.

Counsel for the appellant has also relied upon the judgment of the Hon'ble Supreme Court in ***“Kirti and another vs Oriental Insurance Company Limited”***, 2021(1) RCR (Civil) 478, to submit that the Tribunal should have adopted the minimum wages as prescribed by the Labour Commissioner, Haryana, instead of minimum wages as prescribed by the Deputy Commissioner, Karnal.

Counsel for the appellant has further contended that even on the conventional heads, the Tribunal has assessed the compensation on a higher side and the total compensation, if assessed by taking the income of the deceased as Rs.9,803/- per month, would come to Rs.19,22,740/- and therefore, the present appeal be allowed and the impugned award may be set-aside.

After hearing the counsel for the appellant and going through the impugned award passed by the Tribunal as well as the lower court record, I find no merit in the present appeal, on the following grounds:-

(a) A perusal of the claim petition would show that in Para 22 of the claim petition, it is specifically

stated that the accident was caused due to rash and negligent driving of respondent No.1, who while driving motorcycle bearing No.HR91-A-7367 (owned by respondent No.2) rashly and negligently and without observing the traffic rules and coming on the wrong side of the road, hit the scooter driven by the deceased Lahna Singh, which resulted into his death, after he was shifted to the hospital and thereafter, the FIR No.292 dated 07.05.2021 under Sections 279 and 304-A IPC was registered against respondent No.1 on account of rash and negligent driving.

In the written statement filed by respondent No.1 and 2 i.e. driver and owner, this fact is not specifically denied and only the negligence on the part of respondent No.1/driver is denied. The insurance company in corresponding Para 22 of the written statement has admitted the accident by stating that the negligence was of the deceased himself and therefore, the argument of counsel for the appellant that no accident took place with the offending vehicle is beyond the pleadings in the written statement of the insurance company itself.

(b) In the examination-in-chief of PW-2 Mahavir Singh, it has come that on 07.05.2021, when the local police came to the hospital, he along with one Rajpal were taken to the place of accident where they found the scooter of the deceased Lahna Singh and Platina bike bearing R.C. HR91-A-7367, lying at the accident spot in a damaged condition and only thereafter on the same day, the FIR was registered, would reflect that the vehicle was recovered by the police at the spot. Again in the cross-examination, the insurance company suggested that it is correct that the police has taken PW-2 Mahavir Singh at the place of occurrence on 07.05.2021, wherein the scooter of the deceased and motorcycle, in

question were lying at the spot. The suggestion given to this witness by the insurance company itself show that the offending vehicle was found lying in a damaged condition on the next day of the accident.

(c) The aforesaid fact is also supported from the fact that after registration of the FIR on 07.05.2021, at the same time vide recovery memo (Ex.P4), the Investigating Officer took in possession the accidental scooter bearing No.HR31-P-5137 as well as the motorcycle bearing No.HR91-A-7367 mark Platina Black colour in the presence of the witnesses. The investigation part by the police also reflect that the damaged motorcycle driven by respondent No.1 was recovered at the spot even on the next day.

(d) All the aforesaid facts show that the motorcycle, in question driven by respondent No.1 was involved in the accident as admitted in the written statement of the driver/owner as well as the insurance company. The motorcycle was recovered from the spot in a damaged condition by the police immediately after registration of the FIR on the same day i.e. on 07.05.2021 and during the investigation, on the basis of the registration number of the FIR, the police was able to locate the owner of the motorcycle and thereafter, the driver, who has caused the accident.

(e) The investigation conducted by the police suggest that the accident was caused due to rash and negligent driving of respondent No.1 and therefore the findings recorded by the Tribunal on Issue No.1 is affirmed as the delay of one day in registration of the FIR is duly explained by the claimants.

(f) So far as the argument raised by counsel for the appellant that there is no eye-witness to the accident and therefore, the negligence on the part of respondent

No.1 is not proved, does not find force in the circumstantial evidence, which has come on record especially when the accident is not disputed or denied by the driver, owner as well as the insurance company in their written statement and rather in the cross-examination of PW-2 Mahavir Singh, a suggestion was given that the motorcycle was recovered at the spot in a damaged condition after the accident, therefore, the finding on Issue No.1 is upheld.

(g) Further, so far as the argument raised by counsel for the appellant that the Tribunal has wrongly taken the minimum wages as prescribed by the Deputy Commissioner, Karnal instead of the Labour Commissioner, Haryana, it is worth noticing that it is held by the Hon'ble Supreme Court in "Jakir Hussein vs Sabir and others", 2015(2) RCR (Civil) 141, that the wages rate as per the minimum wages notification is only a yardstick and not an absolute factor to be taken to determine the compensation.

It is also held by the Hon'ble Supreme Court in "Chandra @ Chanda @ Chandraram & another vs Mukesh Kumar Yadav & others", 2021(4) RCR (Civil) 492, that merely because the claimants were unable to produce any documentary evidence to show monthly income of the deceased, the same does not justify adoption of lowest tier of minimum wages while computing the income and there is no reason to discard the oral evidence of the wife of the deceased about his monthly income.

In the instant case, it has come in the statement of PW-1 Kitabo that Lahna Singh was hale and hearty person, aged 39 years and was a skilled worker, working as an Electrician and was having an earning capacity of Rs.25,000/- per month. It has also come in the statement

of this witness that he was the sole bread earner of the family and left behind 04 persons, who are dependent on his income. This witness further stated that an amount of Rs.1.00 lac was spent on the treatment, medicines and hospitalization and transportation of the dead body, funeral and last rites ceremonies of the deceased, therefore, the Tribunal has rightly assessed the income of the deceased to be Rs. 15,954/- per month. Though, in view of the judgment of the Hon’ble Supreme Court in Chandra @ Chanda @ Chandraram’s case (supra), the income should have been taken as per the deposition of PW-1 Kitabo.

In view of what has been discussed hereinbefore and looking from any angle, no illegality or infirmity is found in the impugned award passed by the Tribunal and accordingly, the same is ***dismissed.***

(ARVIND SINGH SANGWAN)
JUDGE

17.08.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No