

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3616-2022 (O&M)

Date of Decision : August 26, 2022

ICICI Lombard General Insurance Company
(formally known as Bharti AXA General Insurance Company Limited)

....Appellant

Versus

Kirandeep Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rajbir Singh, Advocate
for the appellant.

ARVIND SINGH SANGWAN, J.

CM-10587-CII-2022

For the reasons stated in the application, the same is allowed and the delay of 84 days in filing of the present appeal is condoned.

C.M. stands disposed of.

FAO-3616-2022

Prayer in this petition is for setting aside the award dated 15.2.2022 passed by the Motor Accident Claims Tribunal, Rupnagar vide which the respondents-claimants were granted the following relief :-

Sr.No.	Heads	Amount (Rs.)
1.	Annual dependency of the claimants after deduction of 1/3rd towards personal and living expenses	Rs.1,28,800/-

2.	Multiplier	'17'
3.	Total Loss of Dependency (1,28,800/- x 17)	Rs.21,89,600/-
4.	Loss of Consortium	Rs.40,000/-
5.	Loss of estate	Rs.15,000/-
6.	Funeral expenses	Rs.15,000/-
	TOTAL	Rs.22,59,600/-

Further, keeping in view the age, rights and liabilities of the respondents-claimants, the total compensation granted was to be apportioned by the claimants as under :-

Sr.No.	Name	Relation	%age of apportionment
01.	Claimant-Kirandeep Kaur	Widow	40%
02.	Claimant-Prabhpreet Singh	Minor son	30%
03.	Claimant Jasmer Kaur	Mother	15%
04.	Claimant-Surjit Singh	Father	15%

Counsel for the appellant has provided pleadings as well as the evidence of the parties to enable this Court to re-appreciate the evidence and pleadings.

Counsel for the appellant has assailed the findings only on the ground that no accident took place of the offending vehicle driven by respondent No.1-Swayam Prakash Singh, who was driver of Innova Car bearing registration No.DL-4C-NE-2337 owned by respondent No.2.

Counsel for the appellant has submitted that in the written statement filed by respondents No.1 and 2, the averments set up by appellant were denied regarding the accident. Similarly, in the written statement filed by the appellant-Insurance Company, it is stated that the petition has been filed by the claimants in collusion with respondents No.1 and 2 as no accident has taken place.

Counsel for the appellant has argued that though PW1 Kulvir Singh in his evidence in examination-in-chief has stated that on 14.12.2018, deceased Manpreet Singh was going on his motorcycle No.PB-12-AE-4921 to attend duties as security guard in a college and at about 6.00 p.m., when he reached at the main gate and had taken a turn towards the college, in the meantime, a Innova car driven by respondent No.1 at a high speed came from the opposite side in a rash and negligent manner and hit against the motorcycle of Manpreet Singh, who fell down and became unconscious and received multiple and grievous injuries, including head injury. Kulvir Singh witnessed the accident, who was going on his Scooty bearing registration NoPB-AD-1632 to meet his relative. The ambulance of the college took the deceased to the hospital, from where he was referred to the PGI, Chandigarh for further treatment. He died due to the injuries on 21.12.2018 in P.G.I.

Counsel for the appellant-Insurance Company has submitted that in cross-examination, this witness has stated that he reached at the spot after 15-20 minutes and, therefore, he is not an eye-witness. Counsel for the appellant has further submitted that Jasmer Kaur, mother of deceased Manpreet Singh in cross-examination has admitted that PW Jasbir Singh was present in the village and, therefore, he was not an eye-witness and he was introduced later on.

Counsel for the appellant has further argued that even the case was got registered after 8 days, i.e. on 22.12.2018 vide FIR No.26 under Sections 279, 304-A, Police Station Kathgarh.

Counsel for the appellant has submitted that from the evidence of the claimant it is not proved that the accident in question was caused due to the rash and negligent driving of respondent No.1 and rather, the accident in question was never proved by the claimants

and, therefore, the claim petition is filed in collusion of the claimants with the driver and owner.

After hearing the counsel for the appellant and going through the entire evidence as well as the written statement and on re-appreciation, I find no merit in the same.

PW1 in examination-in-chief has specifically described the manner in which the accident was caused by the rash and negligent driving of respondent No.1, who came from the opposite side in his Innova car at a high speed driven in a rash and negligent manner and struck against the motorcycle of the deceased. One line in the cross-examination is referred to by the counsel for the appellant do not shatter the testimony of this witness if the entire cross-examination is considered where the PW1 is consistent about giving the description, the manner in which the accident was caused by respondent No.1 in a rash and negligent manner.

The next argument of counsel for the appellant is that Jasmer Kaur-claimant-mother of deceased Manpreet Singh had stated in her cross-examination that Lakhbir Singh was in the village when the accident took place is of no consequence as Jasmer Kaur is an illiterate and rustic lady living in a village and her examination-in-chief is only with regard to the information given by PW1 Kulvir Singh that the accident was caused by rash and negligent driving of respondent No.1 and second is with regard to the compensation part regarding the untimely death of her son Manpreet Singh. Again, if we read the entire cross-examination of this witness, no discrepancy can be found.

The delay in registration of the FIR is duly explained as deceased Manpreet Singh was firstly taken to the local hospital from there he was referred to the PGI, Chandigarh due to head injury and ultimately he died on 22.12.2018 and, therefore, the family member of

the deceased were busy in taking care of him and it is only after his death, i.e. 22.12.2018, the present FIR was registered by Kulvir Singh. It has come in evidence that on 14.12.2018 ASI Ram Shah visited the hospital but doctor declared that the injured was not in a position to make statement. Hon'ble the Supreme Court in 2011 (2) RCR (Civil) 190, **Ravi Vs. Badrinarayan and others** has held that delay of 03 months in registration of FIR is not fatal to claimant's case, if it is explained.

It is worth noticing that respondent No.1, the driver of the offending vehicle, has not chosen to appear in the witness box to deny this fact that no accident took place with the vehicle which he was driving at the relevant time or that he was not present at the place of occurrence or his vehicle was present at some other place. Therefore, in the absence of the statement of driver of the offending vehicle that no accident was caused with his Innova car, the statement of PW1 Kulvir Singh is rightly relied upon by the Tribunal.

Even otherwise, nothing has come on record that respondent No.1, who is facing criminal trial in FIR No.26 dated 22.12.2018 under Sections 279 and 304-A IPC, registered at Police Station Kathgarh, wherein the charge sheet under Section 173 Cr.P.C. is already filed by the police is ever challenged by respondent No.1 by making any representation to the higher police authority about his false implication or before the competent Court of law in this regard. Therefore, the trial Court has rightly held that the accident in question was caused due to rash and negligent driving of respondent No.1.

Though the counsel for the appellant has not argued on the quantum of compensation as assessed by the Tribunal, however, on the appreciation of the statement of PW7 Kirandeep Kaur, widow of deceased Manpreet Singh, it has come that deceased Manpreet Singh was 29 years of age and was working as a Security Guard in a College

and was earning Rs.12,000/- as salary and by giving tuition to the children and was earning Rs.15,000/- per month. This witness has stated that Rs.02 lacs were spent on the treatment of deceased Manpreet Singh, who met with an accident on 14.12.2018 and died on 22.12.2018, while in hospital. This witness has also produced on record the training certificate, matriculation and 10+2 certificate of Manpreet Singh. Therefore, the Tribunal has rightly assessed the income of the deceased.

However, it is worth noticing that the Tribunal did not award any amount towards the medical expenses, which were borne by the claimants during the period of treatment of deceased Manpreet Singh.

It has come in the statement of PW3 Satwinder Kaur, Senior Assistant, Office of Civil Surgeon, Civil Hospital, Rupnagar that Manpreet Singh was admitted in the Civil Hospital, Rupnagar on 14.12.2018 and, thereafter he was referred to P.G.I., Chandigarh.

Though no specific record has been produced in the shape of the medical bills, yet the deceased remained in Government Hospital for about 09 days. Therefore, the claimants must have spent at least Rs.20,000/- per day towards medical expenses, diet, attendant as well as transportation etc. as the deceased was a resident of Rupnagar, whereas he remained admitted in P.G.I., Chandigarh for about 09 days. Therefore, the Tribunal should have awarded him of Rs.1,80,000/- towards the medical expenses, attendant, diet and transportation etc. The Hon'ble Supreme Court in 2011 (ACJ) 2418 **Ranjana Prakash and others Vs. Divisional Manager, New India Assurance Co. Ltd. And another** has held as under :-

"7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate Court to pass any order which ought to have been passed by the trial Court and to make

such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate Court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can, however, be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seek compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate Court can make the insurer jointly and severally liable to pay compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is less than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by

the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by claimants seeking enhancement of compensation.”

Since, this appeal is dismissed in *limine* and no appeal by the claimant is filed, in exercise of its *suo motu* power under Order 41 Rule 33 C.P.C., considering the fact that the Tribunal did not grant any amount on account of the medical treatment, attendant, diet, transportation charges, it is directed that the appellant-Insurance Company will pay an additional amount of Rs.1,80,000/- along with interest @ 7.5% per annum as awarded by the Tribunal.

Accordingly, finding no merit in this appeal, the same is dismissed.

August 26, 2022
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO