

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

FAO No. 56 of 2011 and
Cross Objection No. 135-CII of 2016
Date of Decision:5.9.2022

Reliance General Insurance Company Limited

---Appellant

versus

Meenu Devi and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Rajneesh Malhotra, Advocate and
Ms. Vatika Sharma, Advocate
for the appellant
Mr. Kulvir Narwal, Advocate and
Mr. Satish Kumar, Advocate
for respondents No. 1 to 6 and Lrs of respondent No. 7
Cross objectors No. 1 to 6 and Lrs of respondent No. 7
Mr. Abhishek Goyal, Advocate
for Mr. Pardeep Goyal, Advocate
for respondent No. 11.

JAGMOHAN BANSAL, J. (ORAL)

1. By this order, appeal bearing FAO No. 56 of 2011 and Cross Objection No. 135-CII of 2016 which are arising from same incident and award dated 3.5.2010 passed by learned Motor Accident Claims Tribunal, Jhajjar (for short "Tribunal") whereby learned Tribunal has awarded a sum of Rs. 32,76,000/- alongwith interest @ 7.5% per annum, are hereby decided.

2. The Reliance General Insurance Company Limited (for the sake of convenience hereinafter called as "appellant") has filed appeal raising question of negligence and quantum of compensation

whereas claimants have filed cross objections for enhancement.

3. The brief facts emerging from record and arguments of both sides are that on 20.06.2008, Dayanand (deceased) was travelling from village Silani towards Delhi on his motorcycle bearing registration No. DL-4SBK-5333 which was hit by motorcycle bearing registration No. HR-14-C/2434 (for short "offending vehicle") near village Kot Boriya. Dayanand breathed his last on the way when he was taken to hospital. The dependents of deceased filed claim under Section 166 of the Motor Vehicles Act and learned Tribunal after considering issues involved and arguments of both sides awarded a sum of Rs. 32,76,000/- alongwith interest @ 7.5% per annum as compensation.

4. Learned counsel for the claimants-cross objectors contended that the claimants would be satisfied if amount of compensation is calculated in view of judgments of Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121** and **National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680**.

5. Learned counsel for appellant contended that it was a case of head on collision and learned Tribunal has wrongly fastened liability of accident on driver of offending vehicle and accordingly awarded compensation. He is not disputing the fact that offending vehicle was involved in accident which stood insured by the appellant-Company, however, the learned Tribunal has wrongly held driver of the offending vehicle negligent and responsible for the

accident.

6. On the question of head on collision, learned counsel for claimants pleaded that the police registered FIR against driver and final police report was filed. They had led evidence of eye witness whereas appellant-insurance company has not led any evidence and even today no evidence has been brought on record to indicate that deceased was rash and negligent or there is contributory liability. Head on collision does not mean that there is contributory liability. In support of his contention, he relied upon judgment of Hon'ble Supreme Court in **Minu Rout and another vs. Satya Pradyumna Mohapatra and others 2014(1) SCC (Cri) 384**. Learned counsel for the insurance company does not dispute the fact that learned Tribunal has not granted claim under the headings consortium and loss of estate.

7. I have perused the record and heard arguments of both sides.

8. Learned Tribunal while passing impugned award framed following issues:-

1. Whether Daya Nand had died in a motor vehicular accident, which took place due to rash and negligent driving of motor cycle bearing registration No. HR-14-C/2434 being driven by respondent No. 1? OPP
2. If so, whether petitioners are entitled to the compensation. If so to what amount and from whom? OPP
3. Whether the petition is not maintainable in the present form? OPR

4. Relief.

9. There is no dispute with respect to issue No.3 and dispute is confined to issue Nos. 1 and 2.

10. Learned Tribunal has considered statement of Om Parkash who was examined as eye witness (PW-4). An FIR No. 302 dated 20.6.2008 under Sections 279 and 304-A IPC at Police Station Jhajjar was registered against the driver of the offending vehicle. Learned Tribunal on the basis of documentary as well as oral evidence held that driver of offending vehicle was rash and negligent which resulted into his death of deceased.

11. An independent person who claimed to be an eye witness has deposed that driver of the offending vehicle was rash and negligent which caused death of the deceased. In the absence of any documentary or oral evidence led by insurance company or driver or owner of the offending vehicle especially when eye witness has deposed otherwise, it cannot be held that Dayanand was negligent just because there was head on collision. The Hon'ble Supreme Court in **Minu Rout's case (supra)** while dealing with identical issue where FIR was registered against driver of car as well truck, has held:-

“16. P.W.3 was a betel shop owner, whose shop is situated near the spot of the accident. Though he was not examined by the Investigating Officer in the police case he is examined before the Tribunal whose evidence is required to be accepted for the reason that the same is not rebutted by the respondents. P.W.4 has stated in his cross examination that he saw the accident from a little distance from the market place, where about 10 to

20 persons were present. He has further deposed that the truck was in a high speed and the people traveling in the car sustained injuries and the driver of the car Susil Rout suffered grievous injuries and succumbed to the same. He was conscious when he was taken to the Jajpur Hospital on a trekker. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge- sheet-Exh.1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that there was 50% contributory negligence on the part of the deceased driver in causing accident. The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with [Section 302](#) of IPC read with the provisions of the [M.V. Act](#). The Insurance Company, though claimed permission under [Section 170\(b\)](#) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet-Exh.1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of P.W.2 and P.W.3 in their cross-examination and placed reliance on them to record the finding on issue no.1. For the aforesaid reasons, the

findings and reasons recorded by the Tribunal on the contentious issue No.1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law. The Tribunal has accepted the part of oral evidence of the eye witnesses regarding the scene of accident and it has erroneously placed reliance upon the charge-sheet-Exh.1, which was filed against the driver of the offending truck and deceased to hold there was contributory negligence on his part by ignoring the fact that the criminal case against the deceased was abated. Therefore, we have to hold that the finding of fact recorded on issue No.1 by the Tribunal and affirmed by the High Court in the impugned judgment, is erroneous for want of proper consideration of pleadings and legal evidence by both of them. Accordingly, we have answered point No.1 in favour of the appellants in so far as the finding recorded by the Tribunal on the question of contributory negligence of 50% on the part of the deceased is concerned.”

12. In view of the above cited judgment as well findings recorded by learned Tribunal, I do not find myself able to form an opinion contrary to opinion expressed by learned Tribunal, thus, findings recorded by learned Tribunal are upheld and appeal on this issue stands dismissed.

13. In view of above findings, the amount of compensation deserves to be determined in the light of judgments of Hon’ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121** and **National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680**.

Accordingly, compensation under different heads is determined as below:-

Under Head	Compensation awarded
Annual Salary of deceased	Rs. 1,78,900/-
Future prospects (50%)	Rs. 89,450/-
Total	Rs. 2,68,350/-
Deduction for personal expenses (1/5 th)	Rs. 53,670/-
Balance	Rs. 2,14,680/-
Multiplier of 15	Rs. 32,20,200/-
Loss of consortium (44000x7)	Rs. 3,08,000/-
Loss of estate	Rs. 16,500/-
Funeral expenses	Rs. 16,500/-
Total compensation	Rs. 35,61,200/-

The respondents-cross objectors are entitled to interest @ 7.5% from the date of filing of claim petition till the date of actual payment. It is made clear that amount already paid would be deducted from claim determined hereinabove.

The appellant-insurance company is directed to make payment within a period of eight weeks from today.

The appeal and cross-objections are disposed of in the manner indicated above.

(JAGMOHAN BANSAL)
JUDGE

5.9.2022
PARAMJIT

Whether speaking/reasoned
Whether reportable

:
:

Yes
Yes