

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

FAO-4050-2022 (O&M)

Date of Reserved: 22.09.2022

Date of Decision: October 10, 2022

New India Assurance Co. Ltd. Appellant
Versus
Santosh & Ors. Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- R.C. Gupta, Advocate, for the appellant

HARKESH MANUJA, J.

Present appeal has been filed by the appellant/Insurance Company challenging the award dated 20.04.2022 passed by the learned Motor Accident Claim Tribunal, Rohtak (hereinafter referred to as 'Tribunal'), whereby, a sum of Rs.6,06,547/- has been awarded as compensation in favour of claimant/ respondent no. 1 along with interest as specified in the award.

The brief facts of this case are that on 30.03.2018, claimant/respondent No.1, along with her husband, was going to village Beri from Rohtak on Motor-cycle bearing registration No. HR-77B-9472. When they crossed village Maina, respondent No.2 herein, who was driving a white TATA Magic bearing registration No.HR-61B-1975 (hereinafter referred as 'offending vehicle'), hit their motor-cycle and as a result of which they fell down and respondent No.1 herein sustained multiple grievous injuries. Respondent No.1 filed a claim petition before the Learned Tribunal for compensation on account of injuries suffered by her in this accident.

After going through the claim petition and evaluating the evidence led by both the parties, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of respondent No.2 herein. After assessing monthly income as Rs 6000/- and functional disability @ 60%, learned Tribunal awarded compensation in the following manner: -

S.No	Heads of Claim	Amount (in Rs)
1.	Medical and other expenses	71,347/-
2.	Pain and suffering	20,000/-
3.	Attendant Charges	20,000/-
4.	Special Diet	10,000/-
5.	Transportation	10,000/-
6.	Disability	4,75,200/-
	Total	6,06,547/-

With regard to the liabilities, learned Tribunal held that respondents No.2/3 i.e. Driver/owner of the offending vehicle and appellant/ Insurance Company, respectively, were jointly and severally liable to pay the compensation amount however, whole of the liability was to be borne by appellant in terms of the insurance policy.

Being aggrieved against the award dated 20.04.2022, the present appeal has been preferred by the appellant/ Insurance Company.

Learned Counsel for the appellant/ Insurance Company contends that Learned Tribunal has given undue importance to the statements of respondent No.1 and her husband whereas the un-rebutted evidence of DW-1 Raj Karan and the Police Report Ex.DW1/A besides the statement of RW2 Raj Kumar has been ignored. He further contends that FIR dated 31.03.2018 was falsely lodged, one day after the alleged

accident, wherein registration number of the offending vehicle was recorded as HR-61-1975. In this contexts he further submits that this registration number on verification was found to be of a pickup dalla registered with RTA Bhiwani and was not found to be involved in this case and subsequently an 'untraceable report' has been filed by the police in the abovementioned FIR. He also contends that claim petition has been filed against the vehicle with registered No. HR-61B-1975, just to grab compensation and no accident whatsoever took place as alleged in the claim petition against the present vehicle in question i.e. HR-61B-1975. He also contends that learned Tribunal wrongly considered the permanent disability suffered by respondent No.1 to be 80% without any statement of Doctor to prove the same.

I have heard learned counsel for appellant-Insurance Company and perused the paper-book as well as records of this case, however I find no merit in his submissions. Learned Counsel for the appellant/ Insurance Company has opposed the award passed by Learned Tribunal primarily on the ground that initially registration number of alleged offending vehicle was given by the husband of respondent No.1 in FIR as HR-61-1975 and, therefore, he has disputed the identity of the offending vehicle. However, it is the case of respondent No.1 from the beginning, in the FIR as well as in their statements before the Learned Tribunal, that the driver with offending vehicle ran away from the place of accident and, therefore, there could be an inaccuracy in noting down the registration number of the offending vehicle. Perusal of FIR shows that complainant i.e. husband of claimant/ respondent no.1, apart from the registration number of the offending vehicle also specified its color (while) and its make (Tata Magic). It cannot

be a mere coincidence that the description of the offending vehicle given by the husband of respondent No.1 in FIR matches with the details of vehicle in claim petition including its make and color. Further, no personal grudge or animosity has been attributed to claimant/ respondent No.2 by the owner of the offending vehicle to implicate them in this case.

Apart from that, in their statement before the Learned Tribunal claimant/ respondent No.1 and her husband have stated that though in the FIR registration number of the offending vehicle was mentioned as HR-61-1975, however complete No. is HR-61B-1975 and a complaint in this regard was also sent to SP Rohtak which has not been denied or controverted. I also find inconsistency in the 'untraceable report' filed in the FIR related to this case, to the extent that it notes that even details of vehicle no. HR-61B-1975 was also inquired from RTA Office Jhajjar and its owner Prakash S/o Rajmal was inquired and it was not found to be involved in the case. However, in the claim petition, owner of the vehicle with same registration number is respondent No. 3 who is different and even he has not denied in his statement the ownership of the offending vehicle.

It is also the settled principle of law that in accident claims, claimant need not to prove its case beyond reasonable doubt and burden of proof has to be discharged only on the basis of preponderance of probabilities. In this regard reliance can be placed on judgment of Hon'ble Supreme Court in the case of "***Bimla Devi and others Vs Himachal Road Transport Corporation and others***" reported as 2009 (3) RCR (civil) 805. Relevant para 15 of the same is reproduced herein-below: -

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It

was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

In my view, on the basis of testimony of claimant/ respondent no.1; husband of claimant (eye-witness); and from the contents of FIR; it can be reasonably derived that accident in question was caused by the vehicle bearing registration number HR-61B-1975 on account of the rash and negligent driving of the said vehicle, by the respondent No.2.

On the issue of permanent disability suffered by the injured due to accident, Ld. Tribunal relied upon Disability Certificate i.e. Ex.P.37, which reflects 80% permanent disability to the injured on account of above knee amputation left thigh (post traumatic) which was corroborated by the testimony of PW-4 Dr. Kunal Sharma and Ex. P-3, copy of MLR of the respondent No.1. Hospitalization as well as the treatment of respondent no.1 has also been substantiated by the medical bills (Ex. P-5 to P-26 & P-39) and discharge slip (Ex.P-38) duly brought on record. Therefore, in my considered opinion, disability of the respondent No.1 was sufficiently proved and I find no error in the same and hence it does not require any interference.

No other arguments were raised.

In view of the discussions made hereinabove, the present appeal is dismissed in limini with no order as to cost.

Pending miscellaneous application(s), if any, shall also stand disposed of.

October 10, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>