

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

**FAO No.6155 of 2016 (O&M) and
Cross Objections No.55-CII of 2017**

Reliance General Insurance Co. Ltd.

....Appellant

Versus

Munni and others

.....Respondents

FAO No.6164 of 2016 (O&M)

Reliance General Insurance Co. Ltd.

....Appellant

Versus

Narinder and others

.....Respondents

Date of Decision : 15.07.2022

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sanjeev Kodan, Advocate
for the appellant.

None for respondents No.1 to 4/cross-objectors.

None for respondent No.5.

PANKAJ JAIN, J.

These two appeals are at the behest of Insurer.

2. Both the appeals are directed against an Award passed by the Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal') whereby two claim petitions filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') arising out of a motor-vehicular accident have been allowed.

3. In FAO No.6155 of 2016 claimants have filed cross-objections.
4. Both the appeals are directed against the common Award and involve same set of facts.
5. Claim petition No.21 of 2016 titled as 'Munni and others vs. Chander Bhan and others' was filed by legal heirs of deceased Dilbag seeking compensation. Narinder, who was travelling with deceased Dilbag and got injured in the same accident, preferred Claim Petition No.22 of 2016 titled as 'Narinder vs. Chander Bhan and others' seeking compensation on account of injuries suffered by him.
6. Facts are being taken from Claim Petition No.21 of 2016. As pleaded, on 13th of December, 2015 deceased Dilbag and Narinder were travelling in Car bearing No.HR-05Y-5911. Dilbag was driving the same. A blue coloured Tractor Make Sonalika DI-35 driven by respondent No.5 rashly and negligently collided with the car. Dilbag lost his life. Narinder suffered injuries.
7. The claim petitions were contested by the respondents. On the basis of the pleadings of the parties, the following issues were framed by the Tribunal :-

“1. Whether the claimants are entitled to compensation on account of death of Dilbag, son of Baldeva, resident of village Bhanpura, Distt. Kaithal in claim petition titled as Munni etc. vs. Chander Bhan & ors. and on account of injuries suffered by claimant Narinder, son of Shri Avtar Singh, resident of Sidhpur, in Claim Petition

Narinder vs. Chander Bhan & ors., in a road side vehicular accident which occurred on 13.12.2015 at about 06:20 PM near Peer Ahead of Gian Deep School, at main road of village Padla on account of rash and negligent driving by respondent no.1 while driving the offending vehicle bearing registration no.HR-08U-9281? OPP

2. *If issue no.1 is proved, then what amount of compensation, the claimants are entitled to and from whom? OPP*
3. *Whether the respondent no.1 was not holding a valid and effective Driving Licence and the offending vehicle was being driven in violation of terms and conditions of insurance policy at the time of accident? OPR-3*
4. *Relief.”*

8. The Insurer/appellant has assailed the finding on Issue No.1 primarily on two grounds :-

- (i) The FIR was registered after delay of two days. In FIR, the offending Tractor has been mentioned as Sonalika DI-35 of Blue colour whereas in claim petition, the same has been mentioned as Sonalika DI-750. Thus, he claims that it's a case where the vehicle has been falsely implicated.
- (ii) Ld. Counsel submits that since it is a case of head on collision as evident from the photographs on record, thus, the Tribunal ought to have held both the vehicles involved in the accident guilty of contributory negligence to the extent of 50:50.

9. I have heard Ld. Counsel and have gone through the records of the case.

10. It needs to be noticed that test in the claim petitions filed under the Act is 'preponderance of probabilities' and not 'beyond reasonable doubt'. The contradiction as highlighted by Ld. Counsel for the appellant is not of such nature that can belie the case of the claimants. Ramesh Son of Balwant, who is stated to be an eye-witness of the accident was examined as PW-2. Narinder, who is injured witness and also a claimant himself stepped into witness-box as PW-3 and explained all the facts leading to the accident. Copy of Report under Section 173 Cr.P.C. (Exhibit PE) and FIR (Exhibit PA) have been proved on record. Respondent No.5 is facing criminal trial for rash and negligent driving. Ld. Counsel for the appellant has not been able to point out any circumstance which would warrant interference in the finding recorded by the Tribunal w.r.t. involvement of the offending vehicle in the accident.

11. Coming on to the second limb of argument raised by Ld. Counsel for the appellant, it is trite that it is not a thumb rule that wherever there is a head-on collision between the vehicles there has to be a contributory negligence. It depends on facts of each case. The finding regarding negligence has to be returned on the basis of the evidence led.

In the present case, respondent No.5 i.e. Driver of the offending vehicle opted not to appear in the witness-box thus, adverse inference has to be drawn against him. Resultantly, the plea w.r.t. contributory negligence raised by counsel for the appellant sans merit. The Tribunal has returned finding on Issue No.1 after analyzing evidence on record. Ld. Counsel for the appellant could not point out any infirmity and, thus, the same is maintained.

12. So far as the compensation payable to the cross-objectors is concerned, Ld. Counsel for the appellant/Insurer is not in position to dispute that the claimants are entitled for future prospects which as per the age of deceased shall be 40% in view of law laid down in '**National Insurance Company Limited vs. Pranay Sethi and others', (2017) 16 SCC 680.** Deduction of 1/4th has been correctly made. Multiplier of 16 has been correctly applied as per dictum of law laid down in '**Smt. Sarla Verma & others vs. Delhi Transport Corporation & another' (2009) 6 SCC 121.** The claimants shall be entitled for the compensation as awarded by the Tribunal on account of loss of consortium/loss of love and affection. They are further held entitled for Rs.16,500/- as Loss of Estate and Rs.16,500/- towards funeral expenses.

13. As a sequel of the aforesaid discussion, the instant appeals are

dismissed being devoid of merit.

14. Cross-objections filed by the claimants are allowed.

15. Consequently, the Award passed by the Tribunal stands modified to the extent as stated herein above. The claimants shall also be entitled for interest @ 9% per annum as awarded by the Tribunal from the date of filing of the claim petition till actual realization of the amount. The amount shall be apportioned as directed by the Tribunal in Para No.31 of the Award.

16. Needless to say that any amount already paid to the claimants shall be set off.

July 15, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes