

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

FAO-7073-2016 (O&M)

Date of decision: 07.01.2022

Bharti AXA General Insurance Company Ltd.Appellant

versus

Smt. Saroj Kumari and othersRespondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Mr. Saurabh Dalal, Advocate
for the respondents.

FATEH DEEP SINGH, J.

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

CM-24311-2021

The application by the applicant/appellant under Order 41 Rule 27 read with Section 151 CPC for seeking permission to lead additional evidence by placing on record judgment dated 03.06.2016 passed by the learned Judicial Magistrate 1st Class,

Jhajjar, acquitting the accused-Ravi is based on the grounds that the said judgment has come about subsequently and, thus, was necessary for judicious adjudication of the present appeal. It is upon hearing the counsel; it is a finding by a Court of the learned JMIC in the criminal trial emancipating from this accident merely because the Court could not hold the death as a consequence of the injuries so suffered in the accident. It was observed by the learned Magistrate that due to possible surgery on the handicapped leg the death might have taken place during operation and, therefore, is not direct result of rash and negligent act, are matters which does not impresses the Court much. Firstly, on the score that the proceedings under the Motor Vehicles Act are more of summary in nature stricter principles of the Evidence Act are not applicable and is more of a social Legislation for upliftment of the heirs of the deceased. More so, in the present case, it is not the stand in the pleadings and the evidence by the present appellant that no such accident has taken place and, therefore, this finding shall not be a much consequence, this Court does not finds any merit in the present application and, thus, the same stands dismissed.

FAO-7073-2016 (O&M)

Let arguments on the appeal be heard.

The instant appeal is by the insurer-Bharti AXA General Insurance Company Limited, Chandigarh (in short 'the insurer') whereby, a challenge has been made to an award dated 02.05.2016 of the Motor Accidents Claim Tribunal, Jhajjar, whereby, on the petition under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') the Tribunal has awarded the following compensation:-

“19. In view of my findings under the aforesaid issues, the instant claim petition is partly allowed, with cost and the petitioners are awarded compensation of Rs.14,11,207/- (Rs. Fourteen lacs, eleven thousand, two hundred and seven only) on account of the death of Sandeep son of Gordhan in the aforesaid accident. The afore-said amount of compensation shall carry interest @7½ per cent per annum from the date of the institution of the present petitioner till its actual realization.”

Heard counsel for the parties and perused the records.

The brief background of this *lis* is that on 30.07.2012, Sandeep (now deceased) was going to his village on a motorcycle, when around 6:30 PM, he was hit by the tractor bearing registration No.HR-14H-6391 (in short 'offending tractor') which is claimed to be driven in a rash and negligent manner at a high speed. The claim is on the averments that the deceased received

multiple grievous injuries and was rushed to the General Hospital, Jhajjar, and, thereafter, was referred to PGIMS, Rohtak, where he remained hospitalized till 09.08.2012. Upon his discharge, the injured was treated from General Hospital, Jhajjar, and unfortunately, passed away on 10.10.2012. FIR No.491 dated 31.07.2012 under Section 279 and 337 of the Indian Penal Code registered at Police Station Jhajjar on the statement of the injured now deceased-Sandeep. The claimants, namely, widow-Saroj Kumari, minor children, Khushi-daughter and Harsh-a son as well as widowed mother-Attro filed the claim against the insurer, the owner and the driver of the offending vehicle.

The claim of the claimants that the death was an outcome of rash and negligent driving by the driver of the offending tractor has been opposed by the respondents in their stand denying any such accident having taken place, though, accepting the registration of the FIR and termed it to be an accident and some other vehicle and the FIR to be an outcome of collusion with the police. The insurer accepted the factum of insurance of the vehicle but denied the accident and took the plea that the driver was not holding legal, valid and effective driving license. From the pleadings, the Tribunal framed the following issues:-

1. Whether the accident, resulting into the death of Sandeep son of Gordhan, had taken place due to rash and negligent driving of vehicle, i.e. Tractor bearing registration No. HR-14H-6391 by respondent No.1, as alleged? OPP.
2. If issue No.1 is proved in affirmative, whether the petitioners are entitled to compensation, if so, to what amount and from whom? OPP.
3. Whether the petition is not maintainable in the present form? OPR.
4. Whether respondent No.1 was not holding a valid and effective driving license on the date of alleged accident, if so, its effect? OPR-3.
5. Whether Respondents No.2 and 3 had contravened the terms and conditions of insurance policy, if so its effect? OPR-3.
6. Relief.

The appellant examined PW-1 claimant-Saroj Kumari, PW-2-Nar Singh, PW-3-Dr. S.S. Chauhan, PW-4-Sat Parkash, Ahlmad, PW-5-Roshan Lal, PW-6-Birender and in the process proved copies of MLR as Ex.P-1 and Ex.P-15, post-mortem Ex.P-2, X-ray report- Ex.P-3 and death certificate- Ex.P-4 Ration Card- Ex.P-5, copies of Aadhar cards of the kids Ex.P-6 and Ex.P-7, statement of Nar Singh under Section 161 Cr.P.C-Ex.P-8, discharge slips-Ex.P-9 to Ex.P-11, copy of challan-Ex.P-12, FIR- Ex.P-13, chargesheet-Ex.14, jamabandi-Ex.16, bills-Ex.P-17 to Ex.P-42 and birth certificate-Ex.P-43 and lastly proved copy of voter identity card-Ex.P-44.

The respondents examined in their evidence and proved

driving license of the driver-Ex.R-1, Registration Certificate of the vehicle-Ex.R-2, Insurance Certificate-Ex.R-3 and the insurer further proved the report as to verification of the driving license-Ex.R-4, insurance policy-Ex.R-5 and, thereafter, closed the evidence leading to the passing of the impugned award.

Appreciating the submissions of the counsel for the two sides, the first and the foremost challenge that has come about by Mr. Rajbir Singh, counsel for the appellant is that the death of the deceased could not be attributed to the injuries which were on non-vital part on the legs and which has sought to be refuted with much glance on behalf of respondent No.1 by Mr. Saurabh Dalal, Advocate.

Going through these, the MLR-Ex.P-1 and Ex.P-15 is illustrative that there are fractures on the body of the deceased at the time of his accident and which is well enumerated with the X-ray report-Ex.P-3. Furthermore, the post-mortem report-Ex.P-2 shows the cause of death to be due to pulmonary embolism leading to cardiac respiratory arrest which is 'antemortem' in nature. It is a matter of common knowledge that fat embolism usually occurs in a body when long bones are fractured and the resultant reaction of the body in sending fragments of fat to heal that particular portion

of the bone which is released through the blood stream may sometimes get embedded in the lungs leading to this respiratory arrest and the same is substantiated from the findings in the post-mortem report that clotted blood was found in the lungs as well as the heart and in large vessels and the medical record of Department of PGIMS, Rohtak (Ex.P-3), further illustrates the fracture of long bones of the legs and hip etc. and, therefore, it cannot be termed that it was not a direct cause of the accident. The second line of attack that has come about from the appellant's side is that the accident has taken place on 10.10.2012, whereas, the death has occurred after much delay upon discharge of the deceased from the hospital, does not cuts much ice.

It is the case of the claimants that the deceased remained under medical treatment even prior to his death. Rather is an adverse evidence against the appellants which is further corroborated for the testimony of PW-3-Dr.S.S.Chauhan, Orthopaedic Surgeon, General Hospital, Jind.

The testimony of Saroj Kumari-widow-PW-1 reflects the amount of money, the family has spent on the treatment of the injured prior to his death. The claim that the deceased was carrying on agricultural activities including selling of milk, has not been

displaced in the cross examination of PW-1 as not even a suggestion has been put as to the avocation and earnings of the deceased. It is a matter of common knowledge that people in the rural areas carry on multi-tasking to uplift their standard of living and being engaged in such activities people usually do not keep accounts or submit returns of income tax. The learned Tribunal while adjudicating on the claim has rightly taken the earnings of the deceased to be Rs.5,200/- per month instead of what was claimed by the claimants to be Rs.30,000/- per month. Counsel for the appellant could not substantiate his submissions to this effect. It is in line of the settled proposition of law that in such a situation earnings of the deceased needs to be taken as that of a daily wage earner and which amount does not appears to the mind of this Court to be on the higher side. Keeping in view the age of the deceased to be between 26-30 years as the Tribunal has rightly applied the multiplier of 17 besides taking into consideration funeral expenses and other subsidiary allowances to which the claimants are certainly entitled rather what appears that the Tribunal has awarded a meager rate of interest of 7½ per cent of the compensation amount when it was on the higher side at the time of the accident and the award. The counsel for the appellant

could not in any manner demolish the arguments that have been sought to be raised by the counsel for the respondents that the award is on the higher side.

In view of the foregoing contentions and discussions, this Court does not find any illegality and perversity in the award under challenge and, thus, the present appeal being hopelessly without merit, stands dismissed.

07.01.2022

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No