

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

FAO-4878-2017(O&M)

Date of decision:-1.12.2022

IFFCO TOKIO General Insurance Company

...Appellant

Versus

Smt.Sharda Devi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ajay Singla, Advocate for the appellant.

Mr.Sandeep Kumar Yadav, Advocate
for respondents No.1 to 6.

Mr.Punit Jain, Advocate
for the respondent No.9 – Insurance Company.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that one Ashok Kumar son of Sh.Khayali Ram had lost his life in a road side accident, which took place on 24.4.2015 at about 3:30 a.m. in the area of village Bachhod within jurisdiction of Police Station Sadar, Narnaul, statedly on account of rash and negligent driving of truck bearing registration No.HR-47C-5187 (hereinafter referred to as the offending truck) by Nihal Singh – respondent No.1.

2. The legal representatives of deceased Ashok Kumar, namely, his widow – Smt.Sharda Devi, minor daughters – Kiran, Priyanka, minor sons – Kapil and Dipanshu as well as mother Smt.Shokanda Devi had

brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against Nihal Singh, driver-cum-owner of the offending truck and its insurer IFFCO TOKIO General Insurance Company as well as Partap Singh Saini – owner and Siri Ram General Insurance Company Ltd., Jaipur – insurer of TATA Canter 909 bearing registration No.RJ-23GA-2246, which was being driven by deceased Ashok Kumar at the time of accident.

3. Notice of the claim petition was given to respondents, who put in appearance and after contest vide Award dated 17.1.2017, Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as the Tribunal) allowed the claim petition observing that the accident had taken place due to rash and negligent driving of the offending truck by Nihal Singh – respondent No.1. Therefore, compensation of Rs.15,69,000/- with interest @ 9% per annum was granted to the claimants, payable by respondents No.1 and 2 jointly and severally.

4. Feeling aggrieved by the said award, the respondent No.2 – IFFCO TOKIO General Insurance Company Ltd. has approached this Court by way of filing an appeal, notice of which was given to respondents and respondents No.1 to 6, who were claimants before the Tribunal and respondent No.9 – Siri Ram General Insurance Company of TATA Canter 909 bearing registration No.RJ-23GA-2246 have put in appearance through counsel. Whereas issuance of notice to respondent No.7 Nihal Singh, driver-cum-owner of the offending truck and respondent No.8 Partap Singh Saini was dispensed with by this Court vide order dated 19.2.2018.

5. I have heard learned counsel for the appellant as well as learned counsel appearing for respondents No.1 to 6 and respondent No.9 besides going through the record.

6. Learned counsel for the appellant – insurance company has contended that while calculating the compensation, the Tribunal has taken monthly income of the deceased to be Rs.10,000/- without there being cogent and convincing evidence on record to establish that. It being so, the Tribunal should have assessed the monthly income considering the minimum wages payable to the skilled labourers at the relevant time, which in terms of the notification issued by the Haryana Government at the relevant time were Rs.6,332.75.

7. However, learned counsel appearing for the respondents/claimants has submitted that the claimants had brought sufficient cogent, convincing and reliable evidence on record to prove that the monthly income of the deceased was Rs.16,000/- per month from the avocation of truck driver and an agriculturist and monthly income of the deceased assessed as Rs.10,000/- by the Tribunal is rather on lower side.

8. After hearing the rival contentions, I do not find myself in agreement with learned counsel for the appellant insurance company. The fact cannot be lost sight of that at the time of accident, the deceased was driving Tata Canter 909 bearing registration No.RJ-23GA-2246 and as per the case of the claimants, he was returning to his village from Delhi after unloading onion crop there. RW1 Partap Singh Saini owner of that vehicle in his affidavit Ex.RW1/A has testified that deceased was working as driver on his truck for last about 8-9 years and he used to pay

Rs.10,000/- per month as salary besides other necessary expenses to the deceased. Partap Singh Saini had no reason to make a false statement in favour of the claimants and against the contesting respondents. A trained truck driver getting Rs.10,000/- per month as salary from his employer, the same cannot be said to be excessive or on higher side. There was no reason to disbelieve the testimony of RW1 Partap Singh Saini and the Tribunal had rightly acted upon the same while assessing monthly income of the deceased as Rs.10,000/- from his avocation as a truck driver and reference to the minimum wages for skilled workers at the relevant time in view of the notification issued by Haryana Government was rightly not taken into view by the Tribunal.

9. Learned counsel for the appellant Insurance company has further submitted that it was a case of contributory negligence and the deceased canter driver was also to be blamed for happening of the mishap since the ill-fated canter and the truck No.HR47-C-5187 had collided head on. Therefore, liability of payment of compensation was required to be apportioned amongst the owners and insurance companies of both the vehicles but the Tribunal by misappraisal of evidence and wrong interpretation of law fastened that liability upon owner, driver and insurance company of the truck No.HR47-C-5187 only.

10. Whereas, this submission is strongly contested by learned counsel for the claimants.

11. After giving thoughtful consideration to the rival contentions and going through the record, I find that the Tribunal by considering the facts and circumstances of the case, the evidence brought on file by the

parties and the law on the subject has rightly come to the conclusion that respondent No.1 – Nihal Singh was author of the accident by his rash and negligent driving of the offending truck and no blame in that regard was attributed to the deceased. The oral evidence adduced by the claimants in the form of examining PW3 Shiv Lal, eye witness, who fully supported the case of the claimants and the fact that as deposed by PW2 Rajender Kumar, Assistant Ahlmad in the Court of ACJM, Narnaul that respondent No.1 is an accused in FIR No.116 dated 25.4.2015 under Sections 279 and 304-A IPC, Police Station Sadar, Narnaul registered with regard to the accident and he is facing trial in the Court. He had proved on record copy of the FIR as Ex.P1, final report under Section 173 Cr.P.C. as Ex.P2, charge-sheet as Ex.P3 and postmortem report as Ex.P4. Respondent No.1 could not gather courage of stepping into the witness-box and to depose that he was not at fault in happening of the accident and a wrong FIR was registered against him. Therefore, the Tribunal was justified in returning a finding that accident had taken place on account of rash and negligent driving of the offending truck by respondent No.1 Nihal Singh since there was nothing to show that it was a case of contributory negligence.

12. No other point was argued by learned counsel for the appellant – insurance company.

13. The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

14. Finding no merit in the appeal, the same stands dismissed with costs accordingly.

Since the main appeal stands dismissed, miscellaneous applications, if any, stand disposed of accordingly.

1.12.2022

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No