

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

**FAO-4890-2017 (O&M)
Reserved on : 05.07.2022
Date of Decision : 13.07.2022**

The Oriental Insurance Company LimitedAppellant

VERSUS

Smt. Chubhi Hansda & OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajneesh Malhotra, Advocate for the appellant.
Mr. Ashwani Arora, Advocate for respondent Nos.1 and 2.
Mr. Vishal Malik, DAG Haryana for respondent Nos.3 and 4.
None for respondent No.5.

ALKA SARIN, J.

The present appeal has been preferred by the appellant-Insurance Company against the award dated 10.03.2017 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal').

Learned counsel for the appellant-Insurance Company would contend that there was no negligence in the present case and in fact the driver of the vehicle has since been acquitted in the criminal case. It is further the contention that the eye-witness Surender Lal, on whose statement the FIR was registered, resiled from his statement before the Trial Court in

the criminal case and he was declared hostile. It is further the contention of learned counsel for the appellant-Insurance Company that the amount awarded towards future prospects is on the higher side and not in consonance with the law laid down by Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [2017(4) RCR (Civil) 1009]**.

Per contra, learned counsel for respondent Nos.1 and 2/claimants has contended that solely for the reason that the driver stood acquitted in the criminal case would not be a ground for dismissing the claim petition under the Motor Vehicles Act, 1988. Learned counsel for respondent Nos.1 and 2/claimants has further contended that the said question is no longer *res integra* and the same stands settled by the Supreme Court in the case of **Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr. [(2020)13 SCC 486]**.

Heard.

Brief facts relevant to the present *lis* are that the claim petition was filed by respondent Nos.1 and 2/claimants (mother and father of the deceased) averring therein that on 25.01.2016 at about 09.50 am the deceased Raysen Soren @ Rai Sain Soren was crossing the slip road of Sector 43, Chandigarh while going to the Bus Stand, Sector 43, Chandigarh. When he reached the main gate of ISBT, Sector 43, Chandigarh, a Haryana Roadways Bus bearing registration No.HR-64-7627 came at a fast speed on the slip road and while it was entering the main gate it struck against the deceased. As a result of this accident, the deceased received serious injuries and eventually succumbed to the same. It was the pleaded case that the bus bearing registration No.HR-64-7627 was being driven in a rash and

negligent manner by the driver Balwinder Singh. The FIR was registered on the basis of the statement of one Surender Lal who was a rickshaw-puller and was waiting for the passengers near the main gate. The deceased was 34 years of age at the time of the accident and earning Rs.12000/- per month. In response to the notice, the respondent Nos.3 and 4 herein filed their written statement taking the preliminary objections regarding the cause of action and liability to pay compensation. It was pleaded that no accident took place and the FIR was lodged on the basis of wrong facts. The driver, respondent No.5 herein, filed a separate written statement raising the objections regarding maintainability and suppression of facts. The appellant-Insurance Company filed a separate written statement taking the usual preliminary objections. It was further averred that the owner of the vehicle allowed a driver to drive the same who was not having a Driving Licence.

On the basis of the pleadings, the following issues were framed:

1. Whether accident dated 25.1.2016 at about 9.50 AM resulting in death of Raysen Soren @ Rai Sain Soren occurred on account of rash and negligent driving of vehicle no.HR-64-7627 by respondent no.3 ? OPP
2. Whether the claimants are entitled for compensation for death of Rayseen Soren @ Rai Sain Soren, if so, to what extent and from whom ?
OPP
3. Whether the driver of offending vehicle was not holding a valid & effective driving license on the

date of accident and the vehicle was being driven in violation of terms and conditions of the insurance policy ? OPR4

4. Relief.

On the basis of the pleadings and evidence on the record, the Tribunal awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	Rs.7500/-
2	Annual income of the deceased	Rs.90000/-
3	Annual income after ½ deduction towards personal expenses	Rs.45000/- (90000-45000)
4	Multiplier 16	Rs.7,20,000/- (45000x16)
5	Future prospects @ 50%	Rs.3,60,000/-
6	Total income of the deceased	Rs.10,80,000/- (720000+360000)
7	Funeral expenses	Rs.25000/-
8	Loss of love and affection	Rs.100000/- (50000x2)
	Grand Total	Rs.12,05,000/- (wrongly calculated as 1250000)
	Interest	7.5% per annum

The argument raised by learned counsel for the appellant-Insurance Company that since the driver had been acquitted in the criminal case, hence, the claim petition also ought to have been dismissed, deserves to be rejected in view of the law laid down by the Supreme Court in the case of **Sunita** (*supra*) wherein after referring to a multitude of cases, it has been held as under :

“It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of

just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”

In the case of **N.K.V. Bros (P) Ltd. Vs. M. Karumai Ammal [(1980)3 SCC 457]** the case set up was that since the criminal case in relation to the accident had ended in acquittal, hence, the claim under the Motor Vehicles Act, 1988 should also be rejected. The Supreme Court negated the said argument and held as under :

“3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances

where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.”

In **Krishan Vs. Tarawati [2011(3) PLR 29]** it was held :

“It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgement acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortious claims for accident victims that are required to be established before the Tribunal and the Tribunal will consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court.”

In **Harjinder Kaur & Ors. Vs. Pushpinder Kumar & Ors. [2017(4) ACC 395]** this Court held that *“It is settled law that the Tribunal decides the claim cases on the basis of preponderance of probabilities and strict Rules of evidence are not applicable. It is further settled beyond any doubt that the outcome of a criminal trial is not binding on the Tribunal”*.

The second limb of the argument raised by learned counsel for the appellant-Insurance Company that the future prospects awarded are not in consonance with the judgment laid down by the Supreme Court in the case of **Pranay Sethi (supra)** is well-founded and is accepted. In view of the

law laid in the case of **Pranay Sethi** (*supra*), in the case of the deceased who was 34 years of age, the future prospects ought to have been granted @ 40%.

In view of the above, the award passed by the Tribunal is modified to the extent that the future prospects as calculated by the Tribunal @ 50% are reduced to 40%. The recalculated amount of compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	Rs.7500/-
2	Annual income of the deceased	Rs.90000/- (7500x12)
3	Annual income after ½ deduction towards personal expenses	Rs.45000/- (90000-45000)
4	Multiplier 16	Rs.7,20,000/- (45000x16)
5	Future prospects @ 40%	Rs.2,88,000/-
6	Total income of the deceased	Rs.1008000/- (720000+288000)
7	Funeral expenses	Rs.25000/-
8	Loss of love and affection	Rs.100000/- (50000x2)
	Grand Total	Rs.11,33,000/-

The interest component would remain the same as awarded by the Tribunal i.e. 7.5% from the date of filing of the claim petition till realization. The present appeal is disposed off in the above terms. Pending applications, if any, also stand disposed off.

13.07.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO