

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

FAO No. 353 of 2022 (O&M)

Date of decision: 07.02.2022

United India Insurance Company Limited ... Appellant

Versus

Raj Bala and others ...Respondents

Coram : Hon'ble Mr. Justice Arun Monga

Present : Ms. Sandeep Suri, Advocate, for the appellant.

(Presence marked through video conferencing).

Arun Monga, J. (Oral)

Insurance company is in appeal against an award dated 23.08.2021 rendered by the Motor Accidents Claims Tribunal, Chandigarh. Claimants have been awarded compensation of Rs. 5,26,042/- along with interest on account of death of victim of an accident which occurred on 12.07.2018.

1. Succinct facts first. On 12.07.2018, Jawahara @ Jawahar Lal (since deceased) was pillion riding on motorcycle bearing No. HR-22J-7925 driven by respondent no.3 herein– Rajesh Kumar (Respondent no.1 before the Tribunal). Allegedly, Rajesh Kumar was riding the said motorcycle at high speed, rashly and negligently. When the riders were on Hisar-Fatehabad National Highway at about 08.30 p.m., said Rajesh Kumar suddenly lost control over the motorcycle as a stray animal i.e. a Neelgai

(blue bull) suddenly appeared on the road. Resultantly, both the occupants of the motorcycle fell down on the road. Deceased Jawahara @ Jawahar Lal received multiple grievous and serious injuries on his head, Rajesh Kumar got minor injuries. Jawahara @ Jawahar Lal was taken to V. K. Neurocare and Trauma Research Centre, Hisar where he was admitted as an indoor patient. However, he succumbed to his injuries on 13.07.2018. The police officials visited the hospital on 13.07.2018 after receiving intimation of accident/ death of Jawahara @ Jawahar Lal. Vide DDR No. 21 dated 13.07.2018 accident was reported as per chance. The claimants were reeling under the shock due to sudden accidental death of Jawahara @ Jawahar Lal and respondent no.3- Rajesh being their neighbour, they were not able to take any action even though the accident took place due to negligence of respondent no.3 – Rajesh Kumar. The vehicle was insured with United India Insurance Limited. The deceased, was 70 years of age at the time of death, used to work as a mason on contract basis in and around the city. He earned Rs.25,000 to Rs.30,000 per month. A sum of Rs.2 Lakhs was spent on the treatment of the deceased. Petition was filed claiming compensation to the tune of Rs.26 Lakhs.

2. Respondent no.3 (driver-cum-owner) in his written statement pleaded that the accident was an act of God, stray animal having suddenly appeared on the road as aforesaid.
3. Appellant herein (insurance company) contested the claim petition before the MACT by filing separate written statement.

It pleaded that the accident occurred due to the stray animal, therefore, appellant was not liable. Further objection was taken that the legal representatives/claimants had no *locus standi* to file the petition. The claim petition is collusive act between the driver of the offending motorcycle and the claimants.

4. Learned Tribunal framed following the issues:

1. *Whether the accident in question had taken place due to rash and negligent driving of the offending vehicle by respondent no. 1? OPP*
2. *If issue no.1 is proved in affirmative, whether the petitioners are entitled to compensation? If so, to what extent? OPP*
3. *Whether the driver of the offending vehicle was not holding a valid and effective driving license at the time of accident? OPR -2*
4. *Whether the offending vehicle was being driven by respondent no.1 in violation of terms and conditions of insurance policy? OPR*
5. *Relief.*

5. On appraisal of record, the learned Tribunal decided issues No. 1 to 4 in favour of the claimants and partly allowed the petition by awarding compensation of Rs. 5,26,042/- to be paid by the driver and Insurance Company jointly and severally with interest @ 7.5% per annum from the date of filing of the petition till the date of realization.

6. Heard the learned counsel for the appellant and with his able assistance perused the paper book.

7. Learned counsel for the appellant argues that the Tribunal has misread the pleadings and evidence led by the parties while allowing the claim petition. In the written statement filed by the

driver-cum-owner (respondent no.3 herein), the factum of accident has not been denied rather he has pleaded it as an act of God.

8. Learned counsel for the appellant further argues that the entire onus of proving the factum of accident and rash and negligent driving was upon the claimants and they have miserably failed to discharge it. The appellant and the driver have proved that there was no rash and negligent driving by examining respondent no.3 – Rajesh Kumar, who appeared in the witness box as RW1. He had minced no words while deposing that a stray animal suddenly appeared on the road and due to which he lost control over the motorcycle. The claimants twisted the facts and shifted the entire blame on respondent no.3 and the Insurance company- appellant only to claim compensation from the insurance company.
9. Learned counsel for the insurance company further disputes the income of the deceased, aged 70 years at the time of death as Rs. 10,700/- per month on the basis of minimum rates of wages notified by Deputy Commissioner, Fatehabad for a labourer during the year 2018-2019. The income of the deceased is liable to be taken equivalent to an unskilled worker as per the notification of minimum wages issued by the State Government for the month of July, 2018.
10. Learned counsel for the appellant further argues that the learned Tribunal has awarded a higher rate of interest on the awarded amount i.e., @ 7.5 per cent as this rate of interest is not

prevalent now. The interest on the awarded amount has to be granted according to change in economy and the policy of Reserve Bank of India. According to him, the Apex Court in Civil Appeal No. 2526 of 2012 titled as Inayath Rajasab Attar vs Shantavva had granted interest @ 6 per cent vide order dated 19.02.2020.

11. Admitted facts that emerge thus are, accident took place and the deceased was 70 years of age at the time of death and is survived by his widow and son.
12. For its finding under issue No. 1, the learned Tribunal gave following reasons:

“23. In the present case, there was no involvement of other vehicle and the accident in question had taken place when a stray animal i.e. nilgai appeared in front of motorcycle bearing registration No. HR22J/7925 being driven by respondent No.1. Hence, there was sole involvement of the vehicle of respondent no.1 driven by him at the time of accident. Therefore, by applying the principle of res-ipsa-loquitur i.e. circumstances speak itself, it can be inferred or presumed that the driver of offending vehicle i.e. respondent No. 1 Rajesh Kumar drove the offending vehicle bearing registration No. HR22J/7925 carelessly or in a negligent manner at the time of accident on 12.07.2018.

24. The postmortem report Ex.P7 also shows that deceased Jawahara @ Jawahar Lal had received injuries in a road side accident and cause of death in this case was haemorrhage and shock due to head injury which was sufficient to cause death in ordinary course of nature. PW3 Dr.V.K.Gupta, Neurosurgeon, V. K. Neurocare and Trauma Research Centre, Hisar has also deposed in his testimony that Jawahar Lal son of Pokhar Ram, resident of Daulatpur was admitted in his hospital on 12.07.2018 with alleged history of road side accident and he was diagnosed with head injury. He has further deposed that after CT Scan, he was found having multiple fractures. The patient remained unconscious at the time of admission and he was got discharged on 13.07.2018 against medical advise.

25. The learned counsel for respondent No.2 has contended that no FIR was lodged by petitioners against respondent

No.1 for causing the alleged accident. It has also been argued that the petitioners did not move any complaint against respondent No.1 for the alleged accident. This contention cannot be taken into consideration because registration of the criminal case is not a condition precedent to file a claim petition. The Hon'ble High Court of Punjab & Haryana in case titled Reliance General Insurance Company Ltd. Vs. Renu and others (supra) also held that there is no dispute with the proposition of law that in order to lodge the claim under the provisions of Motor Vehicles Act, 1988, the registration of criminal case is not a condition precedent. The Hon'ble Punjab & Haryana High Court in case titled Chindo Devi and another Vs. M/s. Oil Mills and others (supra) also held that a statement giving up his right not to prosecute for criminal negligence cannot amount to an admission that there was also no civil liability to sustain a claim for compensation. Moreover, it is also the settled law that the claimants in a claim petition seeking compensation under Motor Vehicles Act are merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt could not have been applied in such cases.

26. In the present case, the insurance policy of vehicle in question bearing registration No.HR22J/7925 was a package policy as per insurance policy Ex.R4. The Hon'ble High Court of Delhi in case titled Yashpal Luthra and another Vs. United India Insurance Co. Ltd. And another (supra) also held that the Comprehensive/Package Policy of a two-wheeler covers a pillion rider and Comprehensive/Package Policy of a private car covers the occupants and where the vehicle is covered under a Comprehensive/Package Policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two wheeler or the occupants in a private car. The supra authorities relied upon by learned counsel for respondent No.2 are not applicable to the facts of the present case as the facts of the present case and those cases are not identical.

27. Therefore, in view of aforesaid discussion, this Court is of the considered opinion that the accident in question was caused on 12.07.2018 on account of rash and negligent driving of motorcycle bearing registration No. HR22J/7925 by respondent No.1 Rajesh Kumar which resulted in the death of Jawahara @ Jawahar Lal son of Pokhar Ram, resident of Daulatpur on 13.07.2018. Accordingly, issue No.1 is decided in favour of petitioners and against the respondents."

13. Under issue No. 2, the learned Tribunal observed that since the claimants had proved that the accident occurred due to rash and

negligent driving of motorcycle, they were entitled to compensation.

14. In order to prove their case, the claimants examined PW1 Shyam Lal, one of the claimants, who tendered his affidavit Ex.PW1/A. Partap Singh son of Pokhar Ram, elder brother of the deceased, was examined as PW2. He tendered his affidavit Ex.PW2/A reiterating the averments mentioned in the claim petition and corroborating the evidence of PW1 Shyam Lal. They deposed in their cross-examination that they were not present at the time of alleged accident. As per DDR No. 21 dated 13.07.2018, Ex.P6, the accident occurred due to appearance of a stray animal in front of motorcycle being driven by Rajesh Kumar (RW1). He has deposed in his affidavit Ex. RW1/A that at about 08.30 p.m. when they reached near Hanuman Temple, Village Badopal, then a stray animal suddenly appeared on the road due to which he lost his control over the motorcycle. The deceased was travelling as pillion rider. They fell down on the road. Said Jawahara @ Jawahar Lal sustained injuries on his head and died due to injuries on 13.07.2018. The written statement as well as his deposition clearly show that accident in question had indeed taken place on 12.07.2018. Respondent no.3 (Rajesh Kumar) was driving the vehicle at the time of accident. His natural instinct and anxiety would be to save own skin and avoid any liability. He was unlikely to admit that accident was caused by his own rash and negligent driving. Intrinsic reliance could not be placed solely

on his self serving denial of rash and negligent driving. There is no evidence led by the appellant and the respondent driver that the condition of the road was so bad that a vehicle going with a normal speed could go out of control. Had respondent No.3 been riding the motorcycle at a moderate speed with due care and caution, the accident might have averted. Negligence on the part of respondent No.3 at the time of accident is duly established by applying the principles of *Res Ipsa Loquitur* and strict liability. No fault can be found with the approach of learned Tribunal in drawing inference of negligence on the part of respondent No.3 herein.

15. On to the quantum of compensation. The deceased, aged 70 years, as per claim of the claimants, was earning Rs. 25,000 to Rs. 30,000 per month. However, no documentary evidence was placed on record. In such a situation, the learned Tribunal has rightly considered and applied the minimum rate of wages notified by Deputy Commissioner, Fatehabad for a labourer during the year 2018-19 as Rs. 10,686 and assessed income of the deceased as Rs.10,700/- per month as the accident took place on 12.07.2018.
16. Applying the ratio of law laid down by Hon'ble the Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 121**, learned Tribunal has rightly deducted 1/3rd of the income assessed towards personal and living expenses and applied the multiplier of 5 and arrived at an objective conclusion to award Rs.5,26,042/- as

compensation to respondent Nos.1 and 2 herein (claimants) along with interest @ 7.5% per annum from the date of filing of the petition till the date of realization, for the death of Jawahara @ Jawahar Lal in a motor vehicular accident. The quantum of compensation awarded by the learned Tribunal is just and fair and cannot be termed as excessive or unreasonable.

- 17. No other point has been argued by the learned counsel for the appellant-insurance company.
- 18. As an upshot of the above discussion, the instant appeal is *sans* merit and is hereby dismissed.

07.02.2022
vs

(Arun Monga)
Judge

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No