

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

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**FAO No. 5476 of 2022 (O & M)
Date of decision : 21.12.2022**

Iffco Tokio General Insurance Company LimitedAppellant

Vs.

Jyoti and othersRespondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Abhimanyu Batra, Advocate, for the appellant

TRIBHUVAN DAHIYA, J. (Oral)

This is an appeal filed by the Insurance company against the award passed by the Motor Accident Claims Tribunal, Sonapat (for short 'the Tribunal') dated 1.10.2022 awarding compensation to the respondents/claimants on account of death of Rishi Parkash in a motor accident on 17.1.2021.

2. Learned counsel for the appellant has raised two fold arguments before this Court to challenge the award in question. Firstly, it has been argued that the FIR in question was lodged after eleven days' delay, on 28.1.2021, which itself establishes it to be a case of false implication of the offending vehicle in the accident only to claim compensation from the Insurance company. Secondly, it has been contended that it has come in evidence that the deceased was drunk at the time of accident. Therefore, he himself was responsible for causing the accident and it cannot be said that driver of the offending vehicle was negligently driving the vehicle leading to accident in question.

3. Facts of the case as apparent on record are, the deceased was riding

a motor cycle when he was hit from behind by the offending vehicle, i.e., Santro car, being driven by respondent no.4. Ex.P-14 is the MLR on record, wherein it has been noted in the column of 'the reasons for the admission' that the patient was chronic alcoholic and smoker.

4. The Tribunal while assessing the compensation has considered the fact of delay in lodging the FIR as well as the fact of the deceased being a chronic alcoholic and a smoker. On the date of the accident, injured Rishi Parkash (since deceased) was admitted to Government Hospital, Sonapat on 17.1.2021 itself, when the police was informed about the accident in question. The Investigating Officer had, in fact, visited the hospital. On coming to know that Rishi Parkash had already been referred to PGIMS, Rohtak, and from there to FIMS Hospital, Sonapat, he went there. The doctor declared the injured, who was in ICU, unfit to make a statement. Endorsement (Ex.P-4) further established that on 19.1.2021 and on 23.1.2021, the Investigating Officer had sought opinion of the doctor concerned for recording statement of the injured. However, on both the occasions, he was declared unfit to make a statement. The injured later died on 28.1.2021, when the FIR in question was lodged. In these circumstances, in case there is any delay in lodging the FIR, the same cannot be attributed to the claimants nor can it be taken to be a circumstance against them. The claim for compensation cannot be declined merely because there is some delay in lodging the FIR.

5. Secondly, so far as the arguments regarding the deceased being under the influence of liquor is concerned, the sole reliance has been placed on MLR (Ex.P-14) recorded by the doctor concerned as well as the discharge summary (Ex.P-8). The MLR records that at the time of examining general condition of the deceased, he was drowsy, dis-oriented and smelling alcohol.

This fact in itself is not sufficient to establish any negligence on the part of the deceased in causing the accident in question. There is no other evidence on record which could *prima facie* establish that the deceased contributed to the accident in question in any manner. Even the driver of the offending vehicle has not been examined before the Tribunal who could have proved the allegations. Besides, it has also come in evidence that the motorcyclist/deceased was hit from behind by the offending vehicle driven by respondent no.4. All these facts sufficiently indicate that there is no error of law on the part of the Tribunal in concluding that the accident occurred on account of rash and negligent driving of the offending vehicle by respondent no.4. The preponderance of probabilities based on the evidence led point to that conclusion only.

6. Further, the issue stands settled by the Supreme Court in *Jiju Kuruvila and others v. Kunjamma Mohan and others* 2013 (3) SCC (Criminal) 849, wherein it has been held that no definite finding of negligence of deceased can be recorded merely on the basis that he had taken liquor. Paras. 25 and 26 of the judgment read as under:

25. Post Mortem report, Ext.-A5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal as his stomach was half full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit.

26. The aforesaid evidence, Ext.-A5 clearly suggests that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of accident. The mere suspicion based on Ext.- B2, 'Scene Mahazar' and the Ext.-A5, post mortem report cannot take the place of evidence, particularly, when the direct evidence like PW.3, independent eye-witness, Ext.-A1(FIR), Ext.-A4(charge-sheet) and Ext.-B1(F.I. statement) are on record.

In view of the aforesaid, we, therefore, hold that the Tribunal and the High Court erred in concluding that the said accident occurred due

to the negligence on the part of the deceased as well, as the said conclusion was not based on evidence but based on mere presumption and surmises.

7. In view thereof, there is no ground to interfere with the impugned award passed by the Tribunal.
8. Dismissed.
9. Pending miscellaneous application(s), if any, stands disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

21.12.2022
Ashwani

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No