

FAO No.7204 of 2019 (O&M)

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

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**FAO No.7204 of 2019 (O&M)
Date of Decision : 18.04.2022**

Oriental Insurance Company

...Appellant

versus

Roshni & Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mayank Mathur, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been filed by the insurance company against the award dated 06.09.2019 passed by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as the 'Tribunal') awarding compensation to the claimant-respondent Nos.1 to 6 herein to the tune of Rs.4,62,839/-.

The brief facts relevant to the present *lis* are that the claim petition was filed by the claimant-respondent Nos.1 to 6 herein stating that on 21.01.2018 at about 5:30 PM Roshan Lal (since deceased) was riding as a pillion rider on motorcycle bearing registration No.HR/80/TEMP/2017/1682 driven by respondent No.7 herein. They both were returning from Suchan Kotli, Sirsa to their home at Barwala. When they reached near the gate of Grain Market, Adampur, suddenly a stray bull came on the road and struck into the motorcycle. Respondent No.7 herein could not control the motorcycle and an accident took place. Consequently, Roshan Lal received multiple grievous injuries and eventually succumbed to his injuries. The

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matter was reported to the Police and a GD No.24 dated 21.01.2018 was registered in the Police Station Adampur, District Hisar.

Notice of the claim petition was issued to the respondents. However, despite notice, the rider and owner of the vehicle i.e. respondent Nos.7 and 8 herein, did not contest the claim petition and were proceeded against ex-parte.

The appellant-Insurance Company filed its written statement and claimed that the claim petition was filed in collusion with the owner and driver to grab compensation. It was further averred that no accident took place. The age, occupation and income of the deceased was also disputed. It was further averred that the driver did not hold an effective and valid driving licence.

From the pleadings of the parties the following issues were framed by the Tribunal :

1. Whether the accident in question took place on 20.01.2018 causing death of Joginder on account of rash and negligent driving of respondent No.1 while driving the vehicle bearing registration No.HR/80/TEMP/2017/1682 ? OPP
2. If issue No1 is decided in favour of petitioners then what amount of compensation to which the petitioners are entitled and from whom ? OPP
3. Whether the petition is not maintainable in the present form ? OPR

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4. Whether the respondent No1 was not having valid and effective driving licence at the time of accident ? OPR2

5. Relief.

Subsequently, issue no.1 was framed afresh by the Tribunal as under :

Whether accident in question took place on 20.1.2018 causing death of Roshan Las has arisen out of the use of motorcycle bearing no.HR80/Temp/2017/1682 being driven by respondent No.1 ? OPP

On issue No.1, the Tribunal held that the claimants had been able to prove that the deceased met with an accident arising out the use of the vehicle in question. On the basis of the evidence led, compensation to the tune of Rs.4,62,839/- along with interest was awarded to the claimants holding the owner and the insurer i.e. the appellant-Insurance Company jointly and severally liable to pay the amount of compensation.

The sole argument raised by the learned counsel for the appellant-Insurance Company is that the accident never took place and a false claim had been filed in order to grab the compensation.

Learned counsel for the appellant-Insurance Company would contend that the driver of the vehicle i.e respondent No.7 herein had not mentioned the number of the motorcycle in his statement Ex.P/2 made before the Police. It is further the contention that though it had been stated by the driver, respondent No.7 herein, that he had taken the deceased to the hospital, however, as per the medical records the deceased was stated to

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have been brought to the hospital by one Sahil, as per Ex.R/1 and, therefore, it is the contention that the accident never took place.

Heard.

In the present case it is not in dispute that the deceased was taken to the hospital with the history of a road accident. The statements of RW-1 Dr. Anil Kumar and RW-2 Dr. Rakesh would support the version put forth by the claimants and it has been deposed by both the witnesses that the deceased was brought to the hospital with a history of a road-side accident. The rider of the motorcycle, respondent No.7 herein, while reporting the matter to the Police had got his statement recorded to the effect that the accident had taken place when a bull came on the road and struck into the motorcycle and the deceased received grievous injuries, which eventually proved fatal. Further, the driver of the vehicle, respondent No.7 herein, did not step into the witness box to rebut the evidence led by the claimants. He would have been the best person to have deposed in the case. However, since he chose not to step into the witness box, an adverse influence was drawn against him. It has further come on the record that the motorcycle on which the deceased was riding pillion was registered in the name of respondent No.8 herein who is the brother of the rider i.e. respondent No.7 herein. It is well settled that in such like cases the claimants are merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied while dealing with the motor accident cases. The approach of the Tribunal should be a holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability, which stands satisfied in the present case.

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No other argument has been raised by the learned counsel for the appellant-Insurance Company.

In view of the pleadings and evidence on the record and the findings recorded, I do not find any illegality or infirmity in the impugned award passed by the Tribunal. The present appeal is without merit and is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

April 18, 2022
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(ALKA SARIN)
JUDGE

Whether speaking/non-speaking : Speaking
Whether Reportable : Yes/No