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

FAO-4567-2019 (O&M)
Reserved on:- 24.08.2023
Pronounced on:- 06.10.2023

National Insurance Company Limited

...Appellant

Versus

Karan Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. D.P. Gupta, Advocate
for the appellant/insurance company.

Mr. Jarnail Singh Saneta, Advocate
for respondents No. 1 to 3.

Respondent No. 4 *ex parte.*

Mr. Ram Bhati, Advocate
for Mr. Naresh Kumar, Advocate
for respondent No. 5.

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AMARJOT BHATTI, J.

1. The appellant – National Insurance Company Limited has filed present appeal against impugned Award dated 19.04.2019 passed by learned Motor Accident Claims Tribunal, Panipat vide which the claim petition filed by the claimants/respondents No. 1 and 2 seeking compensation on account of death of their son Deepak in a motor vehicular accident under Section 166 and 140 of Motor Vehicles Act, 1988 was allowed and the claimants and proforma respondent No. 4 were granted compensation to the tune of Rs.15,85,848/- along with interest at the rate of 7.5% per annum from the date of filing of the petition till realization.

2. Karan Singh and Krishna Devi have filed claim petition under Section 166 and 140 of Motor Vehicles Act, 1988 to claim compensation on account of death of their son Deepak in a road side accident which took place on 15.10.2016. At the time of accident, Deepak was 26 years old. He was Barber by profession and used to earn Rs. 15,000/- per month. On the fateful day of 15.10.2016, Deepak was going from his village Chulkana to Samalkha for domestic work on his motorcycle. At about 06:30 P.M. when he reached near wine factory, Chulkana road, District Panipat, the offending motorcycle bearing Temporary Registration No. HR-99T-YM-8701 came from the opposite side driven by the son of respondent No. 1 namely Gaurav rashly and negligently without observing traffic rules and hit against the motorcycle of Deepak. Both the motorcyclists fell down and received serious injuries. Their motorcycles were also damaged. The brother of deceased took Deepak to CHC, Samalkha but he was referred to PGI Khanpur and after few hours, he was further referred to PGIMS Rohtak for treatment. Ultimately, Deepak succumbed to the injuries during treatment. They had spent Rs. 1 lac on treatment. The driver of offending motorcycle also died during treatment. The accident had taken place due to rash and negligent driving of driver of offending motorcycle. Regarding this accident, F.I.R. bearing No. 655 dated 16.10.2016 was registered. Postmortem was conducted on the dead body. The claimants have suffered great loss on account of untimely death of their son. They have claimed compensation to the tune of Rs. 20 lacs along with interest at the rate of 18% per annum from the date of accident till realization with costs.

3. Notice of the claim petition was given to the respondents. The respondent No. 1 Somi who was mother of the driver did not appear

despite service and was proceeded against *exparte* vide order dated 30.07.2018. Manjeet – respondent No. 2 appeared in this case and filed written statement taking preliminary objection that the claim petition was not maintainable. The petitioners had no locus standi to file the case. The petitioners concealed material facts from the Tribunal. In-fact, vehicle bearing Temporary Registration No. HR-99T-YM-8701 was financed by the answering respondents. Thereafter, the respondents sold the vehicle to one Sandeep on 20.06.2016 who gave affidavit that he shall be responsible for any police case, Court case, challan etc. Therefore, on 20.06.2016, the answering respondent had no concern with the vehicle in accident. Even the Tribunal came to the conclusion that the accident had taken place with the said vehicle, in that eventuality, the vehicle was duly insured with respondent No. 3. Accordingly, the insurance company is liable to pay compensation to the claimants. The claim petition was bad for non-joinder and mis-joinder of necessary parties. On the merits of the case, the facts were denied for want of knowledge and the claimants may be put to strict proof of the same. The answering respondent had no knowledge regarding the accident. After 20.06.2016, the answering respondent had no concern with the motorcycle. It was prayed that the claim petition filed against him may kindly be dismissed with costs.

4. The insurance company also appeared and filed the written statement taking preliminary objection that the owner-cum-driver did not inform the insurance company about the said accident. The alleged accident took place due to the negligence of Deepak who was driving motorcycle bearing No. HR-10-A-8767. He was not having valid driving license. The insurance company was not liable to pay compensation as the

owner of the vehicle used the vehicle without proper registration. Therefore, the insured violated the terms and conditions of insurance policy. The other objections were also raised. The driver of the motorcycle bearing temporary registration number was also not having valid effective driving license. Therefore, the insurance company cannot be held responsible. On merits, the facts are denied for want of knowledge. It was denied that the deceased victim was 26 years old, self employed as a Barber or was earning Rs. 15,000/- per month. It is denied that the claimants had spent Rs. 1 lac on the treatment, last rites and transportation of the deceased. The manner of accident was also specifically denied. The respondents No. 1 and 2 have violated the terms and conditions of insurance policy. Therefore, the insurance company cannot be held responsible to pay the compensation.

5. The respondent No. 4 also appeared and filed separate written statement admitting the facts of the case as narrated by the claimants. The claimants No.1 and 2 are the legal heirs of deceased but they were not dependent on the deceased. It was the answering respondent being wife who was dependent on her deceased husband – Deepak. Therefore, she is entitled to receive the compensation and the claim petition filed by the claimants may kindly be dismissed.

6. From the pleadings of the parties, following issues were framed by the Tribunal on 22.11.2018:-

> *(1) Whether the accident took place on 15.10.2016 due to rash and negligent driving of vehicle bearing No.* HR-99T-YM-8701 by respondent No. 1 resulting into death of Deepak?
>
> OPP

(2) Whether the petitioners are entitled to compensation? If so, to what extent and from whom?

OPP

(3) Whether respondents No. 1 and 2 violated the terms and conditions of insurance policy of respondent No. 3?

OPR-3

(4) Relief.

Thereafter, from the pleadings of the parties, the following additional issue was framed on 19.04.2019 :-

2-A Whether the respondent No. 4 is also entitled to compensation along with petitioners? If so, to what extent and from whom? *OPP*

7. In order to prove the claim petition, petitioner No. 1 Karan Singh himself stepped into the witness box as PW-1. The petitioners/claimants further examined Ashu, brother of deceased as PW-2. Thereafter, learned counsel for the petitioners tendered documents i.e. copy of F.I.R. Ex.P-1, copy of report under Section 173 Cr.P.C. Ex.P-2, copy of statement of Ashu Ex.P-3, copy of site plan Ex.P-4, copy of recovery memo of motorcycle Ex.P-5, copy of mechanic report of motorcycles Ex.P-6, copy of application for postmortem of Deepak Ex.P7, copy of rukka Ex.P-8, copy of police death report Ex.P-9, copy of statement of Sandeep Ex.P-10, copy of statement of Gordhan Ex.P-11, copy of postmortem report of Deepak Ex.P-12, copy of statement of Sandeep, Satpal and Parveen Ex.P-13 to Ex.P-15, postmortem report of Gaurav Ex.P-16, copy of Aadhar card of Karan Singh, Deepak, Sonia Mark A-1 to A-3 and closed the evidence.

8. In order to rebut the case of the claimants/petitioners, no oral evidence was led by the respondents. However, learned counsel for

respondent No. 2 tendered documents i.e. copy of RC Ex.R-1, copy of insurance policy Ex.R-2, copy of Driving License of Deepak Kumar Ex.R3 and closed the evidence.

The learned counsel for insurance company tendered copy of terms and conditions of insurance policy Ex.R-4 and closed the evidence.

9. After hearing the arguments advanced by learned counsel for all the parties, the claim petition filed by the claimants was allowed by passing Award dated 19.04.2019 vide which compensation to the tune of Rs. 15,85,848/- along with interest at the rate of 7.5% per annum, was granted in favour of petitioners/claimants and proforma respondent No. 4, to be paid jointly and severally by the respondents, as detailed therein. Feeling aggrieved of this Award, the present appeal has been preferred by appellant - National Insurance Company Limited.

10. I have heard the arguments of learned counsel for the appellant as well as learned counsel representing the contesting respondents. The learned counsel for the insurance company argued that the facts of the case and the evidence on record were not rightly appreciated by the learned Motor Accident Claims Tribunal, Panipat. There is no convincing evidence on record to establish the factum of accident as well as identity of the driver of alleged offending motorcycle. The claimants have examined Ashu PW-2 as eye-witness to the accident. His cross-examination has been totally ignored. He categorically stated that at the time of accident, the offending vehicle was not having any number. He was told about the registration number of the said motorcycle by his friend after 5-6 days. The cross-examination of this witness clearly indicates that he was not eye-witness to the accident. The learned Motor

Accident Claims Tribunal, Panipat had led emphasis on the other documents placed on record. On the basis of report under Section 173 Cr.P.C., it cannot be said that the accident or rash and negligent driving was proved on record. The learned counsel for insurance company has relied upon the authority cited **(2015) 15 SCC 364, Supreme Court of India, Division Bench,** case titled "***Kamlesh and others Versus Attar Singh and others***", where in that case, in para No. 8, it was held as under :-

> *"8. .... The fact remains that car had dashed the tempo on the middle portion near footstep. Thus the method and manner in which the accident has taken place leaves no room for doubt that both the drivers were negligent. Man may lie but the circumstances do not is the cardinal principle of evaluation of evidence. No effort has been made by the High Court to appreciate the evidence and method and manner in which the accident has taken place. Both the aforesaid witnesses have stated Maruti Car was in excessive speed. However, it appears driver of tempo also could not remove his vehicle from the way of Maruti Car. Thus, both the drivers were clearly negligent. It appears from the facts and circumstances that both the drivers were equally responsible for the accident. Thus, it was a case of composite negligence. Both the drivers were joint 'tort-feasors', thus, liable to make payment of compensation."*

Even in this case, the evidence was not rightly appreciated by the learned Motor Accident Claims Tribunal, Panipat and it was wrongly concluded that the accident had taken place due to rash and negligent driving of Gaurav, deceased son of respondent No. 4.

Secondly, the learned counsel for insurance company raised the issue that compensation awarded by the learned Motor Accident Claims Tribunal, Panipat is towards the higher side. No future prospects could have been granted. The learned Motor Accident Claims Tribunal, Panipat has wrongly granted compensation of Rs. 40,000/- each to the parents of the deceased as filial compensation. Only respondent No. 4 being widow could have been granted compensation under the head of loss of consortium.

Thirdly, the learned counsel for the insurance company raised the issue that son of respondent No. 1 was driving the motorcycle with temporary registration number which was allegedly owned by respondent No. 2. The regular Registration Certificate standing in the name of Manjeet s/o Jai Kishan is Ex.R-1, which is valid from 31.03.2017 upto 03.05.2031. The alleged accident took place on 15.10.2016, much prior to the issuance of registration certificate. The learned counsel for the insurance company has put reliance on the judgment of Coordinate Bench in **FAO No. 5157 of 2017 (O&M), decided on 15.11.2018, titled "*National Insurance Company Limited Versus Geeta and others*"**, where on account of violation of provisions of Section 39, it was concluded that the said motorcycle was being driving in breach of the terms and conditions of insurance policy, thus the insurance company was granted recovery rights. Even in the case in hand, the respondent No. 2 allowed son of respondent No. 1 to drive motorcycle with temporary number. The regular Registration Certificate was issued much after the accident, therefore, the insurance company is entitled to recovery rights from the insured on account of violation of the provisions of Section 39 and 43 of the Motor

Vehicles Act, 1988. It is prayed that the aforesaid facts were not considered by the learned Motor Accident Claims Tribunal, Panipat by passing the impugned Award dated 19.04.2019. With this prayer, it was submitted that the insurance company may kindly be granted recovery rights by deciding issue No. 3 in favour of the insurance company and against the respondents No. 1 and 2. Therefore, the Award passed by the learned Motor Accident Claims Tribunal, Panipat may kindly be modified, accordingly.

11. The learned counsel for the claimants argued that they had led convincing evidence on record to prove the accident. The eye-witness Ashu was examined as PW-2 to prove the accident and the manner in which it took place. The F.I.R. was also registered against the driver of offending motorcycle. In this case, Deepak as well as driver of the offending motorcycle, both expired and for this reason the trial could not be started. However, they had placed on record all the documents relevant to prove the factum of accident. The statement of Ashu PW-2 remained unrebutted. Therefore, the learned counsel for appellant/insurance company cannot say that the accident or rash and negligent driving was not proved on the file. The quantum of compensation was rightly calculated by the learned Motor Accident Claims Tribunal, Panipat. His income was treated as that of an unskilled worker to the tune of Rs. 7620/-. The deceased was a married man having a wife. He was working as a Barber. Therefore, 40% increase in income was rightly granted considering the future prospects by relying upon the authority cited in ***National Insurance Company Limited versus Pranay Sethi and others*** in **Special Leave Petition (Civil) No. 25590 of 2014**. The respondents No. 2 and 3

have merely tendered documents. Copy of Registration Certificate is Ex.R-1. Copy of Driving License is Ex.R-3 and copy of insurance policy is Ex.R-2, according to which the vehicle was insured for the period 04.05.2016 to 03.05.2017. Therefore, the insurance company was rightly held liable to pay the amount of compensation to the claimants. It was prayed that the appeal preferred by the insurance company may kindly be dismissed.

12. The learned counsel for respondent No. 5 – Manjeet argued that motorcycle bearing Temporary Registration No. HR-99T-YM-8701 was duly insured with National Insurance Company Limited. The copy of insurance policy is Ex.R-2, according to which it was insured for the period 04.05.2016 to 03.05.2017. The regular Registration Certificate was got issued, which is Ex.R-1 and copy of Driving License of late Gaurav is Ex.R-3. Since the vehicle was insured with the appellant – insurance company, therefore, it cannot avoid making payment to the claimants regarding the compensation awarded by the learned Motor Accident Claims Tribunal, Panipat. The appeal preferred by the insurance company is without merits.

13. I have considered the arguments and have gone through the trial Court record carefully. In this case, the appeal has been preferred against the Award dated 19.04.2019 passed by learned Motor Accident Claims Tribunal, Panipat, vide which the claimants were awarded compensation of Rs. 15,85,848/- along with interest, as detailed therein. Feeling aggrieved of this Award, National Insurance Company Limited has filed the present appeal firstly on the ground that in the case in hand, the accident was not proved on record, caused due to rash and negligent

driving of Gaurav while driving offending motorcycle bearing Temporary Registration No. HR-99T-YM-8701. It is matter of record that in this accident, the deceased victim Deepak was driving his motorcycle bearing No. HR-10A-8767, whereas Gaurav was driving his motorcycle with the aforesaid temporary registration number and in this accident both the riders succumbed to the injuries suffered by them. The F.I.R. was recorded on the statement of Ashu, brother of deceased victim Deepak who was examined as PW-2. The copy of F.I.R. bearing No. 655 dated 16.10.2016, under Section 279, 304-A I.P.C. registered at Police Station Samalkha, District Panipat is Ex.P-1. The said Ashu PW-2 has fully confirmed the version narrated in the F.I.R. As per his version, the accident has taken place due to rash and negligent driving of Gaurav who was coming from opposite side and hit the motorcycle of Deepak by coming on the wrong side. There is no evidence on the file to rebut the testimony of Ashu PW-2, therefore, the statement of this witness cannot be ignored. Since the driver of offending motorcycle has expired, therefore, the trial in this case could not proceed. However, the learned counsel for the petitioners has placed on record copy of challan report under Section 173 Cr.P.C. Ex.P-2, statement of Ashu recorded by the police Ex.P-3, copy of site plan Ex.P-4, copy of recovery memo of motorcycle bearing Registration No. HR-10A-8767 Ex.P-5, copy of mechanical test report of both the motorcycles Ex.P-6, copy of application for conducting postmortem on the body of Deepak Ex.P-7, inquest report Ex.P-9, statements of Sandeep and Gordhan Ex.P-10 and Ex.P-11 respectively, copy of postmortem report of Deepak Ex.P-12, copy of statements of Sandeep, Satpal and Parveen Ex.P-13 to Ex.P-15 respectively and postmortem report of Gaurav Ex.P-16. Therefore, the learned counsel for claimants produced the entire record regarding the investigation which was carried out pertaining to this accident. Ashu PW-2 during his cross-examination stated that when the accident took place, the offending motorcycle was without number and he had come to know the number of motorcycle from his friend after few days. The offending motorcycle was taken into police possession. The driver of offending motorcycle expired. It is not a case of hit and run, which could create doubt regarding the testimony of Ashu PW-2. Therefore, I do not find any force in the arguments advanced by learned counsel for insurance company. The findings given by the learned Motor Accident Claims Tribunal, Panipat pertaining to issue No. 1 does not require any interference.

14. Secondly, the learned counsel for insurance company also pointed out that the learned Motor Accident Claims Tribunal, Panipat wrongly granted compensation by considering the future prospects or the parents were wrongly granted Rs. 40,000/- each on account of death of their son. This argument raised by the learned counsel for insurance company is devoid of any merit. The deceased Deepak was a married man who was working as a Barber. His business was bound to increase with the passage of time. Therefore, by rightly relying upon the law laid down by the Hon'ble Supreme Court of India in case titled ***National Insurance Company Limited versus Pranay Sethi and others*** **(supra)**, considering his age as 27 years, 40% increase in income was considered towards his future prospects. Similarly, by relying upon the authority in "***Magma General Insurance Company Limited versus Nanu Ram alias Chuhru Ram and others",*** **<u>Civil Appeal 9581 of 2018</u>, decided on 18.09.2018**,

both parents were rightly granted Rs. 40,000/- each towards filial consortium. Therefore, the findings given by the learned Motor Accident Claims Tribunal, Panipat, while assessing the quantum of compensation further does not require any interference.

15. The learned counsel for insurance company pointed out that the vehicle was being driven by Gaurav in contravention of the terms and conditions of the policy as the motorcycle was still bearing temporary registration number and the motorcycle got proper Registration Certificate much later i.e. on 31.03.2017. I have considered this aspect of the present case. Section 39 and 43 of Motor Vehicles Act, 1988 deals with regards to the necessity for registration as well as regarding temporary registration. It is clearly mentioned in Section 43(2) that temporary registration shall be valid only for a period not exceeding one month and shall not be renewable. So far as the proviso mentioned in this section is concerned, the same does not apply to the facts of the present case. There is a clear cut authority of **Coordinate Bench in FAO No. 5157 of 2017 (O&M), decided on 15.11.2018,** in case titled **"*National Insurance Company Limited versus Geeta and others*"**, where it was concluded that since the vehicle was not having permanent registration number as provided under Section 39 of Motor Vehicles Act, 1988, therefore, the insurance company was granted recovery rights from the owner of the offending vehicle.

In the case in hand, copy of Certificate of Registration of the motorcycle bearing No. HR-99T-YM-8701 was valid from 31.03.2017, whereas, the accident had taken place on 15.10.2016, when the vehicle was being plied with temporary registration number. There is copy of insurance policy Ex.R-2 which further indicates that the insurance was valid from

04.05.2016 to 03.05.2017. Even from the date of insurance, it is clear that the accident had taken place much later i.e. on 15.10.2016. Therefore, at the time of accident, the vehicle was still being plied with temporary registration number whereas the owner was duty bound to get regular Registration Certificate within a period of one month as provided under Section 39 of the Motor Vehicles Act, 1988. Therefore, Gaurav now represented through his legal heir Somi – respondent No. 4 was driving the motorcycle in contravention of the terms and conditions of insurance policy. Since the vehicle was insured, therefore, the insurance company is duty bound to pay the amount of compensation as per Award dated 19.04.2019 and thereafter, the insurance company is granted recovery rights against the insured/owner of offending vehicle i.e. respondent No. 5 – Manjeet.

With this observation, the appeal preferred by the appellant – National Insurance Company Limited is partly accepted and the finding given by the learned Motor Accident Claims Tribunal, Panipat pertaining to issue No. 3 stands modified.

Pending application(s), if any, shall stands disposed of.

The photocopy of record received from the Tribunal be sent back to the concerned quarter.

06.10.2023 **(AMARJOT BHATTI)**
lalit **JUDGE**

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