

FAO-5528-2019 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-5528-2019 (O&M)

Date of Decision:- 31.07.2023

United India Insurance Company Ltd.

....Appellant

Versus

Vidya Devi and Ors.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Amit Kundra, Advocate
for the appellant.

Mr. Dheeraj Narula, Advocate
for respondents No. 1 to 5.

AMARJOT BHATTI, J.

1. The United India Insurance Company Ltd. has filed present appeal against impugned award dated 13.05.2019 passed by learned Motor Accident Claims Tribunal, Sirsa vide which a sum of Rs.9,01,200/- has been awarded in favour of the claimants along with interest as mentioned therein.

2. The facts of the case are that Vidya Devi and others filed claim petition under Section 166 of Motor Vehicles Act for grant of compensation of Rs.30 Lacs along with interest against Atma Ram (driver), Ajay Kumar (owner of offending Chevrolet Car BEAT bearing No. HR-26BU-3989) and United India Insurance Company Ltd. on account of death of Ganpat Ram alias Pappu in a motor vehicle accident. As per the facts, Ganpat Ram alias Pappu was 48 years old at the time of accident. He was doing agricultural work on sharing basis and earning

Rs.25,000/- per month. On the fateful day i.e. 23.11.2017 at about 6:15 PM, the deceased victim Ganpat Ram alias Pappu along with Balram, Subhash, another person namely Subhash, Het Ram, Chhabil Dass and Atma Ram were going to Kurukeshtra from village Karamshana to attend the marriage of son of Balram in car bearing No. HR-26BU-3989 driven by respondent No.1-Atma Ram. The respondent No.1 was driving the car in a rash and negligent manner at a high speed and when they reached near village Mangala, District Sirsa the rear tyre of the car towards co-driver side bursted as a result respondent No.1 lost control over the car and struck against a Safeda tree standing on the right side of the road. Due to this accident, Ganpat Ram alias Pappu died on the spot on account of injuries received in the accident. Regarding this accident Rapat No.24 dated 23.11.2017 was registered on the statement of Balram, at Police Station Sadar, Sirsa. The claimant No.1 is the mother and claimant No.2 to 5 are the children of late Ganpat Ram alias Pappu. The claimants claimed compensation of Rs.30 Lacs along with interest as prayed for.

3. The claim application was contested by respondents No.1 and 2 by filing joint written statement by taking preliminary objection that claim petition is not maintainable. The petitioners have no *locus standi* to file this case. They have concealed material facts. On merits, the facts are denied for want of knowledge regarding accident. The car bearing number HR-26BU-3989 is owned by respondent No.2 and it was taken by respondent No.1 to attend a family function. The car was fully insured with respondent No.3. The respondent No.1 was having valid driving license at the time of accident. The respondents No.1 and 2 are falsely involved in this case. They are not liable to pay any compensation to the

petitioners. Since the vehicle was insured with respondent No.3, therefore, the insurance company is solely liable to pay the compensation to the petitioners, if any. Therefore, the claim petition is liable to be dismissed in the interest of justice.

4. The United India Insurance Company Ltd. has filed separate written statement taking preliminary objection that the claim petition is not maintainable. The DDR was lodged by Balram in which it was clearly mentioned that there was no negligence on the part of the driver of the car. Now a false claim application has been filed with improved version in order to get compensation. It is alleged that the petitioners have no *locus standi* or cause of action to file this case. No information was given by respondent No.2 regarding the said accident. In the absence of documents the existence of driving license and registration certificate are also denied. The said car was driven in violation of the terms and conditions of the insurance policy. On merits, the facts are denied being wrong and incorrect. However, it is admitted that the car was insured with their insurance company for the period 31.08.2017 to 30.08.2018 subject to just exceptions. The amount of compensation claimed by the claimants is excessive and disproportionate to the facts alleged. All the facts mentioned in the claim petition are wrong and incorrect, therefore, the same may kindly be dismissed qua the insurance company with costs.

5. From the pleadings of the parties, following issues were framed by the Tribunal :-

(1) Whether the accident in question took place due to rash and negligent driving of respondent no. 1 by driving a car bearing No.HR-26BU-3989, as alleged in the petition? OPP

2) If issue no.1 is proved, whether Ganpat Ram alias Pappu son of Roop Ram sustained injuries and later on succumbed to his injuries, as alleged in the petition? OPP

3) If issues No.1 and 2 are proved, whether the petitioners are entitled to any compensation on account of death of Ganpat Ram, if so, to what amount and from whom?OPP.

4). Whether the claim petition is not maintainable in the present form?OPR.

5). Whether the petitioners have no locus standi and cause of action to file the present claim petition?OPR.

6). Whether respondent No.1 was not having valid and effective driving licence at the time of alleged accident?OPR3

7). Whether the respondents No.1 and 2 contravened the terms and conditions of the Insurance Policy, if so, its effect?OPR3

8) Relief.

6. In order to prove the claim petition, the claimant examined Parveen Kumar, Head Constable, P.S. Sadar, Sirsa as PW-1, Dharampal one of the petitioners as PW2, Chhabil Dass as PW3 and ASI Satyawan No.157, P.S. City, Sirsa as PW4, along with documents.

7. In order to rebut the case of the claimants, the learned counsel for respondents No. 1 and 2 tendered attested copy of Driving License of respondent No.1-Atma Ram as Ex. R1, copy of registration certificate Ex. R2 and copy of the Insurance policy as Ex. R3. Respondent No.3-Insurance Company tendered copy of insurance policy as Ex.R4.

8. The learned counsel for the insurance company has argued the present appeal only pertaining to issue No.1. The learned Motor Accident

Claims Tribunal, Sirsa has wrongly fastened the liability on appellant-insurance company which is not in consonance with the law laid down by the Hon'ble Supreme Court of India as well as our own High Court. Infact there is no evidence on record to establish that the accident took place due to rash and negligent driving of the aforesaid car by respondent No.1. No FIR has been registered in this case. There is only a DDR in which it is clearly mentioned that the accident took place due to bursting of rear tyre of the car as a result of which the car went out of control and hit against a Safeda tree standing on the right side of the road. In order to establish claim under Section 166 of Motor Vehicles Act, the claimants were required to establish rash and negligent driving on the part of respondent No.1. He referred to the cross-examination of ASI Satyawan as PW4, who during his cross-examination deposed that there was no negligence on the part of driver of the car and in case he was negligent then FIR would have been registered against him.

The learned counsel for insurance company referred to the cross-examination of Dharampal PW-2 who is son of the deceased victim. Admittedly he was not eyewitness to the accident. Similarly, Chhabil Dass PW-3 also confirmed the facts stated in the DDR. During cross-examination he also admitted that there was no negligence of the driver of the car. Therefore, in these circumstances, the claimants had miserably failed to establish that the accident had taken place due to rash and negligent driving on the part of respondent No.1. By ignoring the aforesaid evidence, the learned Motor Accident Claims Tribunal, Sirsa wrongly decided issue No.1 in favour of the claimants and against the respondents. In fact, the accident had taken place due to the reason

beyond the control of respondent No.1. The respondents No.1 and 2 cannot be held liable for this accident nor any liability could have been fastened on the insurance company. It is prayed that the findings given by the learned Motor Accident Claims Tribunal, Sirsa regarding issue No.1 are liable to be set aside by accepting the present appeal and the claim petition filed by the claimants is liable to be dismissed.

9. On the other hand, the learned counsel for respondents No.1 to 5 pointed out that the facts of the case and the evidence on record were rightly considered by the learned Motor Accident Claims Tribunal, Sirsa. There is sufficient evidence on record to prove the accident as well as rash and negligent driving on the part of respondent No.1 as a result of which Ganpat Ram alias Pappu lost his life in the accident. Copy of his post-mortem report is Ex.P-1. Due to the impact Ganpat Ram alias Pappu died on the spot. The facts of the case are duly proved on record by Dharampal PW-2, who is son of the deceased victim. Chhabil Dass PW3 has proved the manner in which the accident took place. ASI Satyawar PW-4 has proved statement of Balram recorded by the police as Ex.PW4/A, the police endorsement as Ex.PW4/B and the copy of GD No.24 dated 23.11.2017 as Ex.PW4/C. It is argued that the facts of the case clearly indicate that the accident took place due to bursting of rear side tyre towards the seat of co-driver. It was the duty of the owner of the car as well as driver to see the condition of the vehicle including its tyres. Therefore, there is rash and negligent act on the part of respondent No.1 and 2. To support this argument, he has relied upon the authority cited in ***2008(1)R.C.R.(Civil) 693 of our own High Court titled as "Darshan Kumari and others vs. State of Punjab and others"*** wherein 'it was observed that it was necessary

for the respondents to prove that the vehicle and the tyres were perfectly in good condition. No evidence has been brought on record in this regard. The tyres do not burst in routine and regular manner unless the same are old or otherwise are not roadworthy. Nothing was shown to the contrary. With this observation the compensation assessed by the Tribunal was upheld.’ On this point learned counsel for contesting respondents has also relied upon the authority cited in ***2003 ACJ 1249 of Himachal Pradesh High Court (D.B.) (Shimla Bench) case titled as “Pyar Chand vs. Himachal Pradesh Road Transport Corporation and another”***, where again in that case ‘the accident had taken place due to sudden bursting of tyre as a result the bus fell into a nala. Number of persons had received injuries and there were two casualties, the injured passengers in that case again deposed that the bus was driven at a high speed and the passengers had told the driver to slow down but in vein. Even in that case there was no record produced regarding proper maintenance of the bus at regular intervals nor it was established that the tyres were roadworthy so as to enable the driver to undertake the journey. In that case again bus driver was held responsible for the accident.’

It is argued that the facts of the case and the evidence on record were rightly considered by learned Motor Accident Claims Tribunal, Sirsa and the respondent No.1 was rightly held responsible for the accident and issue No.1 was correctly decided in favour of the claimants and against the respondents.

10. I have considered the arguments advanced before me and have also gone through the record carefully. The facts of the case are not much disputed. Admittedly the accident took place on 23.11.2017 while the deceased victim Ganpat Ram alias Pappu along with others was going

in car bearing No. HR-26BU-3989 driven by Atma Ram from village Karamshana to Kurukshetra to attend a wedding. On the way the rear tyre of the car towards co-driver side bursted and respondent No.1 Atma Ram lost control over the vehicle and it hit against a Safeda tree on the right side of the road. Due to impact Ganpat Ram alias Pappu suffered serious injury and died on the spot. The case of the claimants is proved on record by examining Dharampal PW2 who is son of the deceased victim. Admittedly, he is not eyewitness to the accident. The learned counsel for the claimants examined Chhabil Dass PW3 who was traveling in the car along with Ganpat Ram alias Pappu. He confirmed the manner of accident. During cross-examination, he further stated that the car was being driven at a high speed and at the same time he stated that there was no negligence on the part of driver. The GD No.24 dated 23.11.2017 recorded on the statement of Balram is Ex.PW4/C is proved on record by ASI Satyawar PW4.

Therefore, considering the aforesaid facts, the accident took place due to sudden bursting of tyre. As observed in the aforesaid authorities relied upon by the learned counsel for the contesting respondents. The tyres of a car do not burst in routine unless the tyres are old and not roadworthy. It was the duty of the driver as well as owner of the car to look into the proper maintenance of the vehicle and to be sure that it could be used for traveling. Therefore, the respondents No.1 and 2 cannot escape their liability so far as the maintenance of the vehicle is concerned. It has also come on record that the car was being driven at a high speed by Atma Ram. In case, Atma Ram was driving the vehicle at a reasonable speed, he could have controlled it and it might had not struck

against the Safeda tree as it happened in the present case. Therefore, to some extent there is some negligence on the part of respondent No.1 while driving the car at a high speed.

Therefore, the findings of learned Motor Accident Claims Tribunal, Sirsa regarding issue No.1 are fully justified. The facts and the law on the point was rightly considered by the learned Motor Accident Claims Tribunal, Sirsa. There is sufficient evidence on record to prove the accident and negligent act as well as fast driving on the part of respondent No.1. The finding on issue No.1 does not require any interference.

No other point was raised in this case. Therefore, in view of the above, I do not find merits in the present appeal preferred by the insurance company and it is accordingly dismissed.

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

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

31.07.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

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