

**CM-5454-C-II-2020 in Cross-Objection-49-2020 in/and 1
FAO-5357-2019(O&M)**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.207

**Case No. : CM-5454-C-II-2020 in
Cross-Objection-49-2020 in/and
FAO-5357-2019 (O&M)**

Date of Decision : July 31, 2023

Iffco-Tokio General Insurance Company
Limited Appellant
vs.
Tarawati and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Amit Goyal, Advocate
for the appellant.

Mr. R. K. Sharma, Advocate
for the respondents No.1 to 5/Cross-Objector.

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GURBIR SINGH, J. :

1. CM-5454-C-II-2020 in Cross-Objection-49-2020 : This is application under Section 5 of the Limitation Act, 1963 for condonation of delay of 92 days in filing the cross-objections. For the reasons mentioned in the application, the same is allowed and delay of 92 days in filing the cross-objections is condoned. The application stands disposed of.

2. Main Appeal : The appeal is filed by Insurance Company challenging the Award dated 14.05.2019, passed by learned Motor Accident Claims Tribunal, Gurugram (hereinafter referred to as – “learned Tribunal”) in case MACT No.44-RBT/ 15.12.2017/07.12.2018. Respondents no.1 to 5 (hereinafter referred to as – the claimants) have filed cross-objections for

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enhancement of the Award.

3. Briefly, the claimants filed petition under Section 166 of the Motor Vehicles Act for grant of compensation on account of death of Kumarpal, who died in road side accident, which took place on 18.10.2017 at 08:30 AM, near Bus Stand, Sohna, caused by Jas Ram, while driving the offending vehicle No.HR-27-F-8792 in a rash and negligent manner.

4. As per the case of the claimants, Kumarpal (since deceased) was going to Sohna with his cousin brother on motorcycle. When they reached at Sohna Bus Stand, the offending vehicle, being driven at a very high speed in rash and negligent manner, came there and hit the motorcycle of the deceased. As a result thereof, the deceased fell down and suffered injuries. He was shifted to hospital, where he was declared 'brought dead'.

5. In support of their case, claimants examined eye-witness Om Dutt as PW-1, Tarawati – one of the claimants and widow of the deceased as PW-2. Further to prove the rash and negligent driving of the driver, claimants tendered some documents to support their case i.e. copy of bills as Ex.P-1 and Ex.P-2, certified copy of final report under Section 173 Cr.P.C. as Ex.P-3, copy of MLC as Ex.P-4, copy of Post-Mortem Report as Ex.P-5, copy of Driving License of the driver as Ex.P-6, copy of RC as Ex.P-7, copy of Insurance Policy as Ex.P-8, copy of FIR as Ex.P-9, copy of jamabandi for the year 2015-16 as Ex.P-10 and copy of Driving License of cousin of deceased as Ex.P-11.

6. The respondents therein i.e. the driver and owner of the offending vehicle and also the Insurance Company (appellant herein) did not

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lead any evidence.

7. Learned counsel for the appellant-Insurance Company has submitted that FIR was registered against the unknown persons. It was got registered by brother of the deceased, who was present at the spot but he was not examined. There is no evidence how the vehicle and driver were identified, when the number of the vehicle and name of the driver, were not mentioned in the FIR. Om Dutt was examined as PW-1. There is no explanation as to why, Om Dutt did not get the FIR registered when he was present at the spot along with the deceased and witnessed the accident. Instead, statement of Om Dutt was recorded after three days. Neither identity of vehicle is established nor identity of driver is established. The counsel for appellant has further argued that deceased left behind widow, son and daughter who are major and parents. There is no evidence that parents were fully dependent upon the deceased. So, deduction regarding personal expenses was required to be 1/3rd and not 1/4th. The learned Tribunal has wrongly considered 30% of amount of income instead of 25%.

8. On the other hand, learned counsel for the respondents No.1 to 5/claimants/cross-objectors submitted that the police, after completion of investigation, filed the challan against the driver. When challan is pending against the driver and he is facing the trial, then there is no ground to disbelieve the version of the claimants regarding accident. Learned counsel for the claimants has further argued that police, on the basis of investigation, named the driver and established the number of offending vehicle. The deceased left behind five dependents i.e. widow, two children and old

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parents. The learned Tribunal has rightly considered the deduction as 1/4th regarding personal expenses of deceased.

9. Heard.

10. The proceedings before the MACT are summary in nature and the Court is to weigh the evidence on the basis of preponderance of probabilities. The learned Tribunal, being Civil Court, is to decide the case on the basis of evidence brought before it. The normal rule that governs civil proceedings is that a fact can be said to be established if it is proved by preponderance of probabilities. The eye-witness has been examined by the claimants. He has proved the accident. The police, on the basis of investigation, presented the challan against Jas Ram-respondent, driver of the offending vehicle. The entire evidence of claimants remained un rebutted. The learned Tribunal, relying on the case of **Girdhari Lal vs. Radhey Shyam – 1993(2) PLR 109**, has held that the driver Jas Ram was driving the offending vehicle in a rash and negligent manner. There is no evidence to disagree with the well reasoned finding recorded by the learned MACT. So, the said finding is **affirmed**.

11. Deceased left behind five dependents. Although his son and daughter are major but major daughter is fully dependent upon his father till her marriage. In our society, it is the duty of son to support their old aged parents. A son may be having other siblings, cannot shirk his responsibility to maintain his parents. The learned Tribunal has rightly considered as 1/4th of income of deceased as his personal expenses.

12. The next argument of learned counsel for the appellant is that at

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the time of the accident, the deceased was of 45 years of age and the learned MACT was required to assess his future income @ 25% instead of 30%. Reliance in this regard has been placed on a Supreme Court judgment in the case of National Insurance Co. Ltd. vs. Pranay Sethi reported as (2017) 16 SCC 680.

13. Learned counsel for the respondents-claimants has submitted that the learned MACT has considered the future income keeping in view the peculiar facts of the instant case.

14. The Award dated 14.05.2019 passed by learned MACT, is hereby modified only to the extent that there would be addition of 25% to the actual income of the deceased as future prospects for the purpose of computation of compensation. The remaining amount of compensation, as mentioned in the Award, would remain the same.

15. The appeal stands partly allowed in the above terms. The Cross-Objections are dismissed.

16. Pending applications, if any, shall stand disposed of along with this judgment.

July 31, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes/No.