

227

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

FAO NO. 1318 OF 2018 (O&M)

DATE OF DECISION: 31.05.2023

New India Assurance Company Limited ...Appellant

Versus

Ranjana Devi and others	...Respondents
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CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ajay Singla, Advocate,
For the appellant.

Mr. Ishan Cooner, Advocate,
For respondents No.1 to 3.

ARUN MONGA, J. (ORAL)

CM-4830-CII-2018

This is an application for placing on record judgment of acquittal dated 01.07.2016 as Annexure A-1 by way of additional evidence.

Heard.

For the reasons stated in application, same is allowed and Annexure A-1 is taken on record, subject to all just exceptions.

MAIN CASE (O&M)

Appellant-Insurance Company is in appeal before this Court against Award dated 10.11.2017 passed by learned Motor Accidents Claims Tribunal, Panchkula (for short 'Tribunal') whereby in a claim petition under Sections 166 of the Motor Vehicles Act, 1988,

compensation of Rs.10,07,480/- was awarded on account of death of Vijay Kumar Shah who died in a motor vehicular accident.

2. Succinct facts are that on the ill-fated day i.e., 07.12.2014, deceased, namely, Vijay Kumar Shah had gone to market in Pinjore, being pillion rider on a motorcycle bearing registration No.HR-49-C-9639 which was driven by one Dalbir Singh. The motorcycle was parked at a distance of about 10-15 feet from the metalled road. Dalbir Singh went to a shop while deceased was sitting on the parked motorcycle. At about 9:00 am, one Bolero pick up bearing No.HR-68-A-9541 (hereinafter referred to as “offending vehicle”) being driven by respondent No.4 herein rashly and negligently came and hit against the motorcycle. Resultantly, Vijay Kumar fell on road and suffered multiple injuries. He was taken to hospital where he was declared brought dead. FIR was registered against the driver of offending vehicle. On these facts, claim petition was preferred before learned Tribunal.

3. Upon notice, respondents No.4 and 5 herein i.e., driver and owner respectively of offending vehicle appeared and filed joint written statement, denying the factum of accident.

3.1 Appellant-Insurance company also filed separate written statement taking objections that driver of the offending vehicle was not holding a valid and effective driving license at the time of alleged accident and therefore, insurance company is not liable to pay anything.

4. From the pleadings of the parties, following issues were framed:

- 1) *Whether claimants died due to motor vehicular accident which had taken place due to rash and negligent driving of respondent No.1 by driving vehicle No.HR-68-A-9541? OPP*

2) *Whether the claimants are entitled for compensation, as prayed for along with interest and from whom?*
OPP

3) *Whether respondent No.1 was not having valid driving license at the time of accident. If so, its effect?*
OPD

4) *Relief.*

5. Based on respective evidence adduced by parties, learned Tribunal decided all the issues in favour of claimants. Vide impugned Award, claim petition was partly allowed and claimants Ranjana Devi, Pooja Kumari and Pritam Kumar, were held entitled to compensation of Rs.17,37,480/- along with interest @ 6% per annum from the date of filing of claim petition till realization and respondents No.4 and 5 herein and appellant were held jointly and severally liable to pay the compensation amount.

6. Aggrieved, Insurance Company is in appeal before this Court.

7. Challenge to the award herein by appellant/insurance company is primarily on two grounds: 1) that the driver of offending vehicle was acquitted in criminal proceedings and therefore, could not have been held responsible for the accident in question; 2) that the deceased at the time of accident, being unmarried, his personal expenses ought to have been half of his earning and not 1/3rd.

8. Learned counsel for appellant/insurance company submits that prosecution has failed to prove the identity of accused and as such his involvement is not proved in the accident. Therefore, appellant company is not liable to pay any compensation. He would further argue that learned Tribunal fell in error while deducting personal expenses as 1/3rd whereas

it is admitted fact that deceased was unmarried at the time of accident and 50% from the income of deceased should have been deducted.

8.1 Learned counsel would further urge that FIR was registered on the basis of complaint made by Dalbir Singh who was alleged to be eyewitness but he did not support the case.

9. Second argument first. Before even this Court could have adverted to same, at the very outset, learned counsel for respondents No.1 to 3/claimants concedes that deduction ought to have been 50% since deceased was unmarried. Accordingly to that extent, impugned award is modified.

10. I am unable to convince myself that merely because there was acquittal in criminal proceedings, there can be legal presumption that driver of the offending vehicle was not responsible for the accident. Trite law it is that yardstick of conviction in criminal proceedings is rather very strict and conviction in criminal proceedings cannot be recorded on the basis of preponderance of evidence.

11. Learned Tribunal after threadbare going into the evidence correctly evaluated the same and found that on the basis of preponderance of evidence, accident had indeed taken place due to rash and negligent driving of respondent No.5 herein. The driver of offending vehicle bearing No.HR-68-A-9541 while returning findings on Issue No.1, I see no ground to interfere with the said findings which are based on unimpeached testimony of witnesses which remained unshaken during cross-examination.

12. In view of above discussion, various computations *qua* each head are modified as below:

Deceased	Vijay Kumar Shah
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Date of accident/death	07.12.2014
Age	22 years
Monthly income of deceased	Rs.8470/-
Future prospects @ 40%	Rs.3388/-
Total monthly income	Rs.11,858/- (Rs.8470/- + Rs.3388/-)
Deduction in dependency for personal expenses @ 50%	Rs.5929/-
Multiplier	18
Annual dependency	Rs.5929x12x18= Rs.12,80,664/-
Loss of consortium (Mother & two sisters)	Rs.44,000x3= Rs.1,32,000/-
Loss of estate and funeral expenses	Rs.16,500/-+Rs.16,500/-= Rs.33,000/-
Total	Rs.14,45,664 /-
Compensation awarded by Tribunal	Rs.17,37,480/-
Reduced amount of compensation to be paid	Rs.2,91,816 /-

13. Accordingly, impugned award is modified in terms of above computations. Reduced compensation shall be payable to claimant along with interest as awarded by learned Tribunal, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimants within a period of 2 months of their approaching the insurance company along with web print of instant order, failing which additional compensatory interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Reduced compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimants, in terms of the following apportionment:-

- a) Ranjana Devi-mother of Vijay Kumar = 60%
- b) Pooja Kumar and Pritam Kumar-Sisters = 20% each

14. Pending application(s), if any, shall also stand disposed of.

MAY 31, 2023
Shalini

(ARUN MONGA)
JUDGE

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