

221

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

FAO NO. 8018 OF 2017 (O&M)

DATE OF DECISION: 15.05.2023

The Oriental Insurance Company Limited ...Appellant
Versus

Karam Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.C. Gupta, Advocate,
For the appellant.

Mr. Vikas Kumar, Advocate for
Mr. Devinder Singh, Advocate,
For respondents No.5 and 6.

ARUN MONGA, J. (ORAL)

CM-26489-CII-2017

Despite availing opportunities, no reply has been filed by non-applicant(s). For the reasons stated in application, same is allowed and delay of 8 days in filing the appeal is condoned, subject to all just exceptions.

MAIN CASE (O&M)

What otherwise appeared to be another usual day when young Pooja, all of a 21-year old and her infant child aged a few months, waited for Rakesh Kumar to come home, turned out to be last day for him as he, while driving a motorcycle, was hit head-on by an over-speeding car resulting in serious injuries and death on the spot. Claimants herein are the unfortunate parents of deceased, his widow and minor child.

2. Appellant before this Court is the Insurance Company seeking to set aside impugned Award dated 17.08.2017 passed by learned

Motor Accidents Claims Tribunal, Panchkula (for brevity, 'Tribunal'), whereby in a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'Act'), compensation of Rs.18,99,000/- was awarded on account of death of Rakesh Kumar in a motor vehicular accident.

3. Brief facts, as noted by learned Tribunal, are that 09.12.2016, Rakesh Kumar (since deceased) was coming towards Sector-26, Panchkula on his Pulsar motorcycle bearing registration No. HR-03-H-1904, whereas his father was following him on his separate motorcycle. Deceased was riding his motorcycle on left hand side of road and at a moderate speed. When he reached in front of petrol pump Sector-25, Panchkula on National Highway No.73, meanwhile, one car make Sail U-VA bearing registration No.UK-07-BD-8437 came from Ramgarh side. It was being driven by respondent No.5 herein rashly and negligently at very high speed and hit the deceased from opposite side due to which he received numerous grievous injuries and died. FIR No.317 dated 10.12.2016 was registered at Police Station, Chandi Mandir against respondent No.5 herein under Sections 279 and 304-A of the Indian Penal Code.

3.1. Deceased Rakesh Kumar was aged 21 years and was employed as an Electrician in K.C. Cross Road Hotel, Sector-5, Panchkula. He was also taking electrical contracts and was earning Rs.30,000/- per month from both the avocations. Claimants, parents, widow and minor son, were fully dependent on income and services of deceased. A sum of Rs.50,000/- was spent on transportation of dead body, funeral and last rites etc.

4. Upon put to notice, respondent No.5 and 6 herein (driver and owner of alleged offending car) filed their joint written statement and denied the factum of accident and involvement of offending vehicle.

4.1. On merits, it was submitted that false FIR was registered against respondent No.5 herein at the instance of claimants in connivance with police only to extract claim.

4.2. Appellant-Insurance Company filed separate written statement taking preliminary objections *qua* mis-joinder and non-joinder of necessary parties; cause of action; locus standi; estoppel; maintainability of petition. It was further pleaded that respondent No.5 herein was not holding a valid and effective driving license at the time of alleged accident. It was further pleaded that false FIR was registered in connivance with local police.

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

1) *Whether deceased Rakesh Kumar died due to accident took place on 09.12.2016 due to rash and negligent driving of offending vehicle bearing No.UK-07-BD-8437 being driven by respondent No.1? OPP*

2) *if Issue No.1 is proved, then whether the claimant is entitled to any amount as compensation, if so to what amount and from whom? OPP*

3) *Whether at the time of alleged accident, the driver of the offending vehicle was not holding valid and effective driving license? OPR-3*

4) *Relief.*

6. On appraisal of record/evidence, learned Tribunal decided Issues No.1 and 2 in favour of claimants and issue No.3 against appellant-insurance company. Consequently, claim petition was partly accepted with costs and award of Rs.18,99,000/- was passed in favour of claimants

along with interest @ 7.5% per annum from the date of filing of petition till its realization. All the respondents were jointly and severally liable to pay the amount of compensation.

7. Learned counsel for appellant-Insurance Company contends that it was a case of contributory negligence and learned Tribunal also fell in error in not considering the fact that there was a delay in lodging the FIR. He further canvasses that no independent witness except father of deceased, who was an interested witness, was examined.

7.1. Further, learned counsel appellant has pointed out that in the absence of proof of qualification of deceased as an Electrician, his income could not have been considered as Rs.9695/- per month. 50% future prospects and Rs.2,25,000/- towards conventional heads were taken on higher side by learned Tribunal.

7.2. Learned counsel for appellant-Insurance Company would further submit that learned Tribunal committed error in not appreciating the provisions of Section 53 of the Employees' State Insurance Act, 1948 which provides for benefits in respect of employment injuries.

8. On the other hand, learned counsel appearing on behalf of respondents No.5 and 6 submits that since respondent No.5 was holding a valid driving licence at the time of accident, findings on issue No.3 were rightly returned against appellant-Insurance company, who is liable to indemnify the insured/respondent No.6 herein.

9. As per office report, service upon respondents No.1 to 4 herein/claimants could not be effected for want of correct address. Given the nature of order being passed, issuance of fresh notice to claimants seems not necessary. In the premise, fresh notice to respondents No.1 to 4 is dispensed with.

10. I have heard competing arguments of learned counsels for parties and have gone through the records with their assistance.

11. Compensation has been awarded by learned Tribunal premised *inter alia* on following reasoning:

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23. *I have gone through the evidence, from the same, a case of sole negligence of the respondent No.1 is made out in causing the accident. PW-1 Karam Singh, an eye witness as well as author of FIR specifically stated that respondent No.1 drove the offending car in a rash and negligent manner and without observing traffic rules and hit his vehicle directly to the deceased from front side and caused the accident. His statement has remained un-rebutted and there is nothing on record to disbelieve him.*

24. *Respondent No.1/driver did not come to explain the manner of accident. He was the best person to speak on the same. His non- appearance in the witness-box, without explanation is sufficient ground to raise adverse inference against him and to assume that whatever stated by the respondents is false and whatever as alleged by the claimants is correct. There is nothing on record led by respondents to suggest false implication of the respondent driver and the offending vehicle.*

25. *Further oral account of PW-1 received support from Detailed Accident Report submitted by the police and from the certified copy of FIR EX.P-3 which shows that the same was registered at the instance of Karam Singh (PW-1 father of deceased) on 10.12.2016 soon after the accident giving details of accident as to manner of it. He also gave the particulars of the offending vehicle. The offending vehicle was also found involved by the police in causing the accident. Certified copy of charge- sheet dated 16.02.2017 Ex.P-1 shows that learned trial Court also found a prima-facie evidence from the police challan against the respondent/ driver for causing the accident and resultant death and framed charges under Sections 279/304-A IPC against respondent No.1.*

26. *In authority reported as Girdhari Lal Vs. Radhey Shyam and others 1993(2) The Punjab Law Report 109, our own Hon'ble Punjab and Haryana High Court held that "in case driver was being tried on account of rash and negligent driving, it is prima facie safe to conclude that the accident occurred on account of rash and negligent driving of the driver". Further, in authority Lakhu Singh Vs. Uday Singh,*

2008(1) Recent Civil Reports Page 805, it has been held that the facts of registration of the FIR and trial of the accused in a criminal case, are sufficient to arrive at a conclusion that the accident had taken place.

27. Contents of post mortem report Ex.P-2 also supported version of PW-1 Karam Singh. It shows that injuries were received by deceased in a road side accident and per opinion of the doctor, the cause of death in this case was due to injuries described, which are ante-mortem in nature. No evidence contrary was led to upset the same.

28. From the above unrebutted evidence, it is made out that respondent No.1/driver was sole at fault in causing the accident in question resulting into death of Rakesh Kumar. No case of contributory negligence is made out. Accordingly, the issue is answered in favour of the claimants.

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40. Perusal of the salary slip shows the deceased was getting total salary at 9695/- per month and was getting 1695/- as conveyance allowance and a sum of 250/- were deducted towards food. This needs to be deducted. Keeping in view the fact that deceased was in job, a case of regular increase is made out. Keeping in view the ratio of Sarla Verma and others Vs. Delhi Transport Corporation & Anr., 2009 ACJ 1298 (SC), and age of deceased, 50% increase is made on 11,625/- i.e. (7750/- (9695-[1695 +250] plus 50% increase, which comes out at 3875/-).

*41. Keeping in view, the number of dependents on the deceased were three and by relying upon ratio of judgment in authority titled as **Sarla Verma's case (supra)**, 1/3 of the total per month income needs to be deducted towards self expenses and maintenance of the deceased. By deducting the same, per month loss of dependency arrives at 7750/- (11,625-3875).*

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44. It was contended that since deceased was covered under ESI provisions, he was not entitled for the compensation and referred to the authority reported as Hamida Khatoon's case (supra).

45. I have pondered over the submissions. The accident and resultant death is not covered under the provisions of Section 53 of the Employees State Insurance Act, 1948, firstly it is no case pleaded by the claimants that accident occurred in the course or was arising out of the of employment. Neither is so pleaded by the insurance company in its written statement. Section 53 of the Act, 1948 provides for the benefits when injury or damage is in respect of the employment injury. Section 2(8) of the Act provides that "in

case of an employment injury Section 46 provides periodical payments to him or to his dependents in case of his death. Employment injury is defined by Section 2(8) to mean a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India. The ruling as relied upon by respondent No.3 insurance company is not applicable as there was a finding that it was an employment injury.”

12. It would be seen that the contentions in the appeal had been raised before elaborately dealt with, duly considered and rejected by Learned Tribunal by giving sound and convincing reasons in the impugned order, more particularly in the part extracted above. I am inclined to agree with the view thereon taken by learned Tribunal.

13. Having perused the Award as well as appreciation of evidence, as noted by learned Tribunal, I find no ground to interfere with the findings rendered by learned Tribunal. Order impugned herein has been passed as per the ratio enunciated in the judicial precedents cited therein.

14. In the premise, instant appeal is dismissed.

15. In the parting, I may hasten to add here that had the claimants been in appeal for enhancement of award, there was room for interference but since they chose to acquiesce to the Award perhaps for giving quietus to entire litigation and to buy peace and seek break from further rounds in the Court rooms, I would refrain to make any further observations about the adequacy of compensation awarded by the learned Tribunal and to tread the path of modifying the same.

16. Pending applications, if any, shall also stand disposed of accordingly.

MAY 15, 2023
Shalini

(ARUN MONGA)
JUDGE

Whetehr speaking/reasoned : Yes/no

Whether reportable : Yes/no