

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

FAO-6769-2018(O&M)

Date of decision:-15.2.2023

IFFCO TOKIO General Insurance Company Ltd.

...Appellant

Versus

Hari Om and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajneesh Malhotra, Advocate
for the appellant.

Mr.Rajnikant Upadhyay, Advocate
for respondents No.1 to 3.

H.S. MADAAN, J.

1. Sh.Hari Om aged about 42 years – husband, Rahul aged about 19 years – son and Ms.Tamanna aged about 16 years – minor daughter of Ms.Savita, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Sandeep – driver, Sushil Kumar – owner and IFFCO TOKIO General Insurance Company Ltd. having its Branch at Sonipat – insurer of truck having registration No.HR-69A-8811(hereinafter referred to as the offending truck), claiming compensation.

2. As per the case of the petitioners/claimants, on 06.08.2017 Ms. Savita (since deceased) along with her son Rahul was going to her

parental home at village Bhainswal, District Sonipat from village Ismaila, Rohtak, on motorcycle bearing registration No.HR-12H-4611; the motorcycle was being driven by Rahul on which Ms. Savita (since deceased) was sitting as a pillion rider; when they reached near Kharkhoda Bypass at Sampla Road, Kharkhoda, in the meantime, offending truck being driven by respondent No.1 Sandeep in a rash and negligent manner came from Delhi side and hit the aforesaid motorcycle, as a result Ms.Savita sustained multiple injuries, which proved fatal; she was shifted to Community Health Centre, Kharkhoda, where she was declared dead; postmortem examination on the dead body of Ms. Savita was conducted at General Hospital, Sonipat.

FIR No.400 dated 06.08.2017 under Sections 279, 337 and 304-A IPC was registered at Police Station Kharkhoda. During the course of investigation, the police had traced out the registration number of offending vehicle as HR-69A-8811 as well as name of its driver as Sandeep.

3. In the claim petition, the petitioners/claimants pleaded that deceased Savita was aged about 41 years at the time of her death and she was running a coaching centre, having passed one year course in Home Industry Garments Construction and Hosiery from Indira Chakarvarty College of Home Science, Agricultural University, Hisar. The petitioners/claimants prayed that compensation amounting to Rs.50,00,000/- along with interest be granted to them, payable by the respondents.

4. On notice, all the three respondents appeared and contested

the claim petition.

Respondents No.1 and 2 had filed a joint written statement, whereas respondent No.3 insurance company came up with a separate statement.

In the joint written statement submitted on behalf of respondents No.1 and 2, they had raised various legal objections, on merits contending that the alleged accident did not occur due to rash and negligent driving of offending vehicle by respondent No.1 – Sandeep, rather, the accident in question was the result of rash and negligent driving of motorcycle bearing registration No.HR-12H-4611 by its driver Rahul and a false FIR was registered against respondent No.1 truck driver – Sandeep in collusion with petitioners.

In the written statement filed on behalf of respondent No.3 – insurance company, it had also raked up various legal objections, on merits contending that no such accident, as alleged had taken place and a false FIR was got recorded initially against an unknown vehicle and unknown driver and in case the alleged accident is proved to have taken place due to involvement of alleged offending truck, even then there was no rash and negligent act on the part of the driver of the truck in question, rather the accident had taken place due to sole rash and negligent driving of the motorcycle by petitioner No.2 Rahul, who was driving the motorcycle without following the traffic rules; he abruptly came on the road and all of a sudden came in front of alleged offending truck without giving any chance to its driver to apply the brakes, resulting in happening of the accident. Therefore, the claimants are not entitled to get any

compensation from the respondents.

All the three respondents prayed for dismissal of the claim petition.

5. On the pleadings of the parties, following issues were framed:-

1. Whether accident in question had taken place due to rash and negligent driving of offending vehicle, bearing registration No.HR69A-8811, by respondent No.1? OPP
2. Whether on account of injuries suffered in the above mentioned accident, Ms. Savita had died, if so, to what amount of compensation the claimants are entitled to and from whom? OPP
3. Whether there was violation of terms and condition of insurance policy, if so its effect? OPR-3
4. Relief

6. Both the parties led evidence in support of their respective claims.

During the course of their evidence, the petitioners have examined Rinku (Ahlmad), as PW-1, Rahul (petitioner No.2), as PW-2, Hari Om (petitioner No.1), as PW-3 and Assistant Sub Inspector Hari Om (Investigating Officer), as PW-4. Documentary evidence has been led by the petitioners.

In rebuttal, no oral evidence has been led by the respondents. However, documentary evidence has been produced by respondents.

7. After hearing arguments, the Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as the Tribunal) while allowing

the claim petition vide award dated 26.7.2018 granted compensation of Rs.9,10,000/- to the claimants along with interest @ 6% per annum from the date of filing of the petition till realization, payable by all the three respondents jointly and severally. The manner in which the compensation amount is to be apportioned is also given in the award.

8. Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

9. Notice of the appeal was issued to the respondents. Respondents No.1 to 3 have put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. Learned counsel for the appellant insurance company has vehemently argued that the truck in question was not involved in the accident and it was planted later on, which is evident from the fact that in the FIR the number of the offending vehicle and name of its driver are not mentioned; later on the claimants in collusion with the local police had involved the truck in question. He has further submitted that the FIR was lodged at the instance of Rahul, the petitioner No.2, who though getting his statement recorded before the Tribunal has stated that the accident in question had taken place on account of rash and negligent driving of the offending truck by Sandeep, however, when he appeared as a witness for prosecution in the criminal case registered against Sandeep, he had denied that truck was being driven by Sandeep at the time of accident and it is duly recorded in the judgment passed by SDJM, Kharkhoda.

12. On the other hand, learned counsel for the respondents/claimants has contended that the petitioners/claimants had brought sufficient cogent and convincing evidence on record to show the involvement of the offending truck in question in the accident and rash and negligent driving thereof by Sandeep to be direct and proximate cause of the mishap, resulting in death of Ms.Savita and the Tribunal has rightly returned such finding while allowing the claim petition.

13. After hearing the rival contentions, I find that the Tribunal was fully justified in deciding issue No.1 in favour of the petitioners/claimants and against the respondents holding that respondent No.1 Sandeep was author of the accident by his rash and negligent driving of the offending truck in which Savita had suffered fatal injuries. The petitioners/claimants had led enough cogent and convincing evidence to discharge onus or proving this issue, whereas respondents had failed to rebut that evidence. It has to be taken note of that respondents No.1 and 2 i.e. driver and owner of the truck in question in their joint written statement have not denied the involvement of offending truck in the accident, rather they have taken up a plea that respondent No.1 Sandeep was not at fault in happening of the accident. On the other hand, the blame for the mishap lies on the shoulders of Rahul, who was driving the motorcycle in a rash and negligent manner. In that way, when the driver and owner of the truck are not denying the involvement of the truck in question, then the insurance company of the truck cannot possibly come up with such plea.

14. Even otherwise, the FIR is not an encyclopedia of the

incident and it need not contain the details of the incident/accident including the manner it took place; the vehicle which caused the accident; the person, who was driving such vehicle etc. It is a matter of investigation. The police after lodging the FIR carries out investigation in the case so as to find out as to how the crime was committed and the persons responsible for committing the crime etc. The very fact that during investigation, the involvement of the truck was found to be there and Sandeep was found to be driving it at the relevant time and he was challaned and faced trial also fortifies the contention of involvement of the truck in the accident and respondent No.1 Sandeep being its driver at the relevant time and further that rash and negligent driving of the truck had resulted in the accident.

15. In *Girdhari Lal Versus Radhey Shyam and others, 1994(1) ACJ 168*, it was observed that when a driver is tried on account of rash driving that leads to a prima facie conclusion that the accident occurred due to rash and negligent driving.

16. Petitioner No.2 – Rahul had got his statement recorded as PW2 in which he provided ocular version of the accident deposing in consonance with the case of the petitioners/claimants as given in the claim petition. From the testimony of PW2 Rahul, it goes to show that respondent No.1 was booked in the criminal case and he is facing trial before the criminal Court. PW4 ASI Hari Om also deposed about the involvement of the truck in question and Sandeep being its driver in the accident.

17. As against that evidence, respondent No.1 Sandeep did not

step into the witness-box to deny that he was not at fault in happening of the mishap and was not driving the truck in question in rash and negligent manner. Similarly respondent No.2 Sushil Kumar owner of the offending truck did not appear to state that the truck belonging to him driven by respondent No.1 Sandeep had not caused the accident. Respondent No.3 insurance company also felt satisfied by tendering of documents and did not make prayer to the Tribunal that Sandeep be asked to appear as a witness to depose regarding facts within his knowledge.

18. It being so, it does not lie in the mouth of appellant – insurance company to say that the truck bearing registration No.HR69-A-8811 insured with it was not involved in the accident or its driver Sandeep was not at fault in happening of the accident in which Savita had suffered fatal injuries.

19. As regards the submission that Rahul while appearing in the criminal Court had denied that the truck was being driven by Sandeep, that submission does not carry any force. Firstly Rahul should have been confronted with that statement when he got his statement recorded before the Tribunal so as to afford him an opportunity to render necessary explanation, which was obviously not done. Therefore, pointing out to some observation in the judgment of criminal Court in that regard is not helpful to the insurance company.

20. Under the circumstances, no fault can be found with the finding recorded by the Tribunal that respondent No.1 – Sandeep had caused the accident by his rash and negligent driving. The said finding is affirmed.

21. With regard to the quantum of compensation, the learned counsel for the appellant insurance company could not convince me as to how the compensation awarded is on the higher side. I find that the compensation awarded to be just and fair considering the settled legal position on the subject. It cannot be said to be on higher side.

22. The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

23. Finding no merit in the appeal, the same stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

15.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No