

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

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FAO-29-2023 (O&M)
Reserved on : 06.01.2023
Date of Decision : 10.01.2023

National Insurance Co. Ltd.

....Appellant

VERSUS

Neelam and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vishwajit Bedi, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the Insurance Company against the award dated 10.10.2022 whereby the claim of the respondent-claimants was accepted and they were held entitled to compensation to the tune of Rs.11,77,000/- along with 9% interest.

The brief facts of this appeal are that on 10.08.2018 at about 1.00 PM the deceased Raj Kumar along with his daughter Varsha and daughter-in-law Sapna was going from the side of Lovely Professional University towards his Village Cheheru on motorcycle bearing registration No.PB-09-T-0992. When they reached in front of the railway over bridge on the slip road/service lane, one Toyota Fortuner bearing registration No.CH-01-AE-6667 (hereinafter referred to as the 'offending vehicle') came from

the side of Jalandhar, which was being driven by Kulpreet Singh (respondent No.4 herein) in a rash and negligent manner. The car struck against the motor-cycle. The deceased Raj Kumar sustained multiple serious injuries as also the other riders. While Varsha and Sapna were discharged, the deceased Raj Kumar was referred to Ohri Hospital, Jalandhar due to the serious nature of his injuries. Eventually the deceased Raj Kumar succumbed to his injuries on 22.08.2018 in Johal Hospital, Jalandhar, where he was subsequently shifted. The claim petition was filed averring that the deceased Raj Kumar was 50 years of age at the time of his death and was working as Foreman/Supervisor with Shri Krishna Builders, Phagwara and was getting a salary of Rs.30,000/- per month. The driver of the offending vehicle Kulpreet Singh, respondent No.4 herein, failed to appear before the Tribunal and was proceeded against ex-parte on 16.01.2019. The owner of the offending vehicle i.e. respondent No.5 herein filed his written statement stating therein that the vehicle was insured with the National Insurance Company and it was the insurance company which is liable to pay the compensation, if any. It was also averred that Kulpreet Singh, respondent No.4 herein, was appointed as a driver on being satisfied of his driving skills and after seeing his driving licence by the owner of the offending vehicle i.e. respondent No.5. Further, the factum of the accident was denied and it was stated that a false FIR has been lodged. The appellant - Insurance Company - also filed its written statement raising the plea that the driver of the offending vehicle was not holding a valid driving licence. Further, three people were riding on the motor-cycle which amounted to a violation of the provisions of Motor Vehicle Act, 1988. The appellant further denied the

pleas as raised in the claim petition. The Tribunal vide award dated 10.10.2022 granted compensation of Rs.11,77,000/- along with interest. Aggrieved by the said award, the present appeal has been preferred by the Insurance Company.

Learned counsel for the appellant would contend that there is a delay of 12 days in registering the FIR and hence that itself proves that the case in hand is a false case which was filed only in order to get the compensation. It is further the contention that the driver of the offending vehicle was driving without a valid driving license. It is further the contention that the deceased was driving with two persons on the pillion seat. Learned counsel for the appellant would further contend that the Insurance Company had examined RW1 Jaswinder Singh, Clerk RTA Office, Jalandhar to prove on the record the documents Ex.R/1 to Ex.R/4 and who had stated that as per the record the driving license Mark 'A' of Kulpreet Singh, respondent No.4 herein, was not issued by his office. It is further the contention that the Insurance Company was not liable to pay the compensation.

Heard.

The contention of the learned counsel for the appellant that there is a delay in lodging the FIR would be of no help inasmuch as it has been held by the Supreme Court in the case of **Sunita & Ors. Vs. Rajasthan State Road Transport Corporation & Anr. [(2020) 13 SCC 486]** as under :

“It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual

occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

In the case of **N.K.V. Bros (P) Ltd. Vs. M. Karumai Ammal [(1980) 3 SCC 457]** the case set up was that since the criminal case in relation to the accident had ended in acquittal, hence, the claim under the Motor Vehicles Act, 1988 should also be rejected. The Supreme Court negated the said argument and held as under :

"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt

here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already

sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.”

In Krishan Vs. Tarawati [2011 (3) PLR 29] it was held :

“It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgement acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortious claims for accident victims that are required to be established before the Tribunal and the Tribunal will consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court.”

In Harjinder Kaur & Ors. Vs. Pushpinder Kumar & Ors.

[2017 (4) ACC 395] this Court held that *“It is settled law that the Tribunal decides the claim cases on the basis of preponderance of probabilities and strict Rules of evidence are not applicable. It is further settled beyond any doubt that the outcome of a criminal trial is not binding on the Tribunal”.*

In view of the law laid down by the Supreme Court, the argument raised by the learned counsel that merely because there is a delay in lodging the FIR the claim petition ought to have been rejected, cannot be accepted. The cases under the Motor Vehicle Act, 1988 are to be decided on the touch stone of probabilities. In the present case the factum of the accident has duly been proved. Once the factum of accident has duly been proved, merely because there was a delay in lodging the FIR the claim petition cannot be rejected.

The next argument of the learned counsel for the appellant that the driver of the offending vehicle was not holding a valid driving license also deserves to be rejected in view of the fact that the owner of the offending vehicle, respondent No.5 herein, had stepped into the witness box as RW-2 and had stated that he had employed Kulpreet Singh, respondent No.4 herein, as a driver and that he had seen his driving license and had also taken his driving test and was only after he was satisfied and after believing that the driving license to be genuine that he employed him (respondent No.4 herein) as a driver. In the case of **Rishi Pal Singh Vs. New India Assurance Co. Ltd. & Others [2022 ACJ 1868]** the Supreme Court has held as under :

“9. Similar question again came up for consideration before a three-Judge Bench in a judgment reported as Pappu and Ors. v. Vinod Kumar Lamba and Anr., (2018) 3 SCC 208 wherein it was held that the onus would shift on the Insurance Company after the owner of the offending vehicle pleads and proves the basic

facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving license at the relevant time. The valid driving license is the license which is produced before the owner. This Court held as under :

“12. This Court in National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] has noticed the defences available to the insurance company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The insurance company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.

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17. This issue has been answered in National Insurance Co. Ltd. [National Insurance Co. Ltd. v.

Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the court can direct the insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the vehicle. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said wellsettled principle. In para 107, the Court then observed thus: (SCC p. 340)

“107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of

clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.”

10. The owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of the driving license before appointing a driver. Therefore, once the owner is

satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving license issued to the driver.”

In view of the law laid down by the Supreme Court, the argument of the learned counsel cannot but be rejected.

The third argument of the learned counsel for the appellant that there were three riders on the motor-cycle also cannot be accepted in view of the law laid down by the Supreme Court in the case of **Mohammed Siddique & Anr. Vs. National Insurance Company Ltd. & Ors. [2020 (1) RCR (Civil) 689]** wherein it was held that merely because the rider of the motor-cycle was riding the motor-cycle along with two others would not make him guilty of contributory negligence. It was further held that riding the motor-cycle alongwith two persons would be a violation of law but violation itself without anything more cannot lead to a finding of contributory negligence unless it is established that his act of riding alongwith two others contributed to the accident in any manner. It was held as under :

“13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry

more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the

insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW-3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.”

In view of the law laid down in **Mohammed Siddique’s** case (*supra*), the argument raised by the learned counsel cannot be accepted.

In view of the above-discussion, the present appeal, being wholly devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

10.01.2023
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO