

**FAO-1213-2024 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Sr. No.121****Case No. : FAO-1213-2024 (O&M)****Date of Decision : May 17, 2024**

Oriental Insurance Co. Ltd.

.... Appellant

vs.

Tripta Devi and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Ms. Madhu Sharma, Advocate
for the appellant – Insurance Company.

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GURBIR SINGH, J. :

1. Challenge in this appeal filed by Oriental Insurance Company Limited (hereinafter referred to as – Insurance Company) is to the Award dated 01.12.2023, whereby learned MACT, Chandigarh (for brevity – the Tribunal) allowed the claim petition filed by respondents no.1 to 4/claimants being wife, daughter and parents respectively of Dev Raj, who died in a motor vehicular accident.

2. In brief, the case of the claimants is that Dev Raj, who was 50 years old and was working as a Pantry Boy with SBMC Security, Sector 34, Chandigarh, was going on his bicycle on Chandigarh-Ambala road on 04.10.2018. When he reached near Jawaharpur-Janetpur turn, a car bearing registration No.PB-70-C-2202 (hereinafter referred to as – the offending

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vehicle) came from behind and hit bicycle of the deceased. As a result, Dev Raj fell on the road and suffered serious injuries. He was taken to Civil Hospital, Dhakoli, Zirakpur, where he was declared “brought dead” by the doctors. The car in question was being driven by respondent no.5 Pyare Lal and was owned by respondent no.6 Sanjeev Kumar. FIR No.265 dated 05.10.2018 was registered at Police Station Dera Bassi, SAS Nagar, under Sections 279, 304-A, 427 of Indian Penal Code against respondent no.5.

3. Upon notice, respondents no.5 and 6 (driver and owner respectively of the offending vehicle) appeared and contested the petition by filing their joint written statement. They denied the accident having taken place by the offending vehicle. The appellant Insurance Company also contested the claim petition and filed separate written statement while admitting that the offending vehicle was insured with the Insurance Company.

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

“1. Whether Dev Raj died on account of injuries sustained in road side accident on 04.10.2018 due to rash and negligent driving of car bearing registration No.PB-70-C-2202 driven by respondent no.1? OPP

2. Whether the claimants are entitled for compensation, if so, at what amount and from whom? OPP.

3. Whether the respondent was not holding a valid and effective driving licence, registration

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certificate and fitness certificate at the time of the accident ? OPR-3

4. *Relief.”*

5. Respondent/claimant no.1 herself stepped into the witness box as PW-1 and also examined Prince Kumar – eye-witness as PW-2 and Nipun Anand as PW-3 – partner of SBMC Solutions, where the deceased was employed before his death. After tendering some documents in evidence, claimants closed their evidence. On the other hand, respondents no.5 and 6 were proceeded against ex-parte. The appellant Insurance Company, in its evidence, tendered a copy of Insurance Policy of the offending vehicle and closed the evidence.

6. After hearing the arguments of parties and appreciating the evidence on record, the learned Tribunal allowed the claim petition and the claimants were held entitled to compensation of Rs.15,08,870/-. The driver, owner and Insurance Company of the offending vehicle were held jointly and severally liable to pay the compensation. It was further ordered that out of the awarded amount, parents of the deceased would get Rs.2,00,000/- each. The minor daughter of the deceased was awarded amount of Rs.1,50,000/- and the balance amount i.e. 9,58,870/- was ordered to be given to the widow of the deceased, with further direction that the share of the minor be kept in fixed deposit with a nationalized bank by the Nazir of the Court till the minor attained majority, to be released later. All the claimants were held entitled to pendente lite and future interest @ 7.5% per annum on the awarded amount.



7. Learned counsel for the appellant Insurance Company has argued that involvement of offending vehicle is totally false in the present case as the author and eye-witness of the FIR did not say anything about driver's name or number/make/model/colour of the vehicle in question and admitted in his cross-examination that the FIR was registered against unknown vehicle and driver. It was also admitted by him that on the day of occurrence, he did not inform the police about the accident despite using mobile phone. He also specifically stated that the deceased was taken to the hospital in the same car by its driver. However, in the FIR, name of Dinesh Kumar finds mention that he had brought one unknown person who was dead. He has further asserted that it is nowhere mentioned that he gave any supplementary statement to the police about any particulars of offending vehicle and driver.

8. In order to support his case, it has been further contended by learned counsel that the aforesaid eye-witness also gave his statement in the criminal case titled **State vs. Piara Lal** regarding this accident but he turned hostile therein. The claimants also moved an application for additional evidence and got examined Investigating Officer Amarjeet Singh as PW-4 only at the time of arguments. This witness stated in his examination-in-chief that he investigated the matter and clicked photographs of place of occurrence etc. but no photograph of the spot was produced by him in the Court. So, it has been vehemently argued that the learned Tribunal has not appreciated the evidence on record in a thorough manner and has failed to



decide the lis, especially qua involvement of the offending vehicle, in a right and judicious manner.

9. I have heard submissions of learned counsel for the parties and perused the case file.

10. The evidence produced by the claimants supported the version of claimants in proving the accident. Moreover, post-mortem report was also proved on record. The employer of the deceased also proved his employment letter and his monthly income.

11. Respondents no.5 and 6 – driver and owner of the offending vehicle denied the accident. Respondent no.5 – driver of the offending vehicle did not step into the witness box in support of his version. Adverse inference is required to be drawn against him. This Court finds support from the judgments namely **Kirpa Singh vs. Ajaypal** reported as **AIR 1930 Lahore-I**, wherein it is held that failure of a party to step into witness-box, to prove his interest in the suit, he being the best person to give evidence, the fact goes strongly against him. Similar analogy was propounded in **Allaha Ditta vs. Mist Bhajen** reported as **AIR 1930 Lahore 401**, wherein it is held that if a party does not appear in the witness-box, circumstances go strongly against him and he runs a great risk, if he does not enter into the witness-box to give evidence in his case upon the facts which are directly within his knowledge and which related to the matter in controversy. This analogy of law has stood test of time and is being followed even 80 years thereafter. It has been reiterated in **Singh Ram vs. Gian** reported as **1997(2) RCR (Civil)**



125 by holding that where the defendant himself had not appeared in the witness-box to controvert the averments of the plaintiff, adverse inference has to be drawn against such litigant, as per settled law, who takes risk by not appearing in the witness-box to rebut the case of the applicant. Likewise, in **Ishwar Bhai C Patel vs. Harihar Behara** reported as **J.T.1999 (2) S.C. 250**, it has also been held that if a party does not enter the witness-box either to prove its own case or to state against the case of the opposite party, the adverse inference has to be against such party.

12. An MACT case is like a Civil Case. The proceedings before the learned Tribunal are summary in nature and the facts are required to be proved on the touchstone of preponderance of probability. The driver of the offending vehicle was put on trial for causing death of Dev Raj by rash and negligent driving of offending vehicle. The eye-witness turned hostile in the criminal trial but before the Tribunal, he supported the version of claimants. Evidence, which is recorded before the Tribunal, can only be seen for deciding the claim petition. The driver of the offending car took the victim to hospital in the car when said person disclosed his name as Dinesh but there is no evidence that the person who took the victim to hospital, was actually known as Dinesh or he disclosed his wrong name. Moreover, there is nothing on the file that driver agitated before any Authority that he was wrongly named in the Challan and was wrongly being tried. Since Section 166 of the Motor Vehicles Act is a beneficial legislation, so, strict proof of liability cannot be made applicable for grant of compensation. The learned

Tribunal has rightly appreciated the evidence produced before it. I do not find any illegality or perversity in the impugned Award passed by learned Tribunal. Resultantly, the appeal is held to be without any merit and the same is accordingly dismissed.

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

May 17, 2024

monika

(GURBIR SINGH)
JUDGE

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