

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

112

FAO No.1234-2023 (O&M).
Date of decision: 25.01.2024

United India Insurance CompanyAppellant.

VERSUS

Neelam and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Maninder Arora, Advocate
for the appellant.

Sukhvinder Kaur, J.

1. By way of this appeal, the appellant-Insurance Company has challenged the award dated 06.12.2022 passed by learned Motor Accident Claims Tribunal, Gurugram, vide which the claim petition titled as Neelam and another Vs. Sandeep Kumar Bharti and others, filed under Sections 166/140 of the Motor Vehicles Act, 1988, was partly allowed and compensation of Rs.27,42,400/- alongwith interest @ 7% per annum was awarded.

2. Brief facts of the case as per record are that on 12.12.2017 at 5.30 P.M. when complainant Suresh Chand was present at Rajiv Chowk, his nephew Mahipal met him there. Both of them left for their village Dubalu on their separate motorcycles. Mahipal was driving motorcycle bearing registration No.Hr-50-C-4189. When they crossed the red light of Sector-

56, Gurugram then one vehicle bearing registration No.HR-55R-4309 being driven in a rash and negligent manner by its driver came and hit the motorcycle of deceased Mahipal, resultantly he fell down and sustained multiple injuries. He was brought to Vatika Hospital by complainant Suresh Chand and other persons where doctors declared him dead. On the statement of Suresh Chand, FIR No.763 dated 13.12.2017 was registered under Sections 279 and 304-A IPC at Police Station, Badshahpur, Gurugram. Deceased was at about 25 years of age at the time of his death in the accident. He was hale and hearty and was drawing monthly salary of Rs.25,000/- by working as electrician in Devyani International Limited. The claimants/ respondents No.1 to 3 have suffered physically, mentally and financially a lot due to his untimely death. So the claimants sought compensation of Rs.80,00,000/- by way of filing the claim petition before the Tribunal qua death of deceased Mahipal.

3. Respondents No.4 and 5 in the present appeal, who were respondents No.1 and 2 before the Tribunal were proceeded against exparte and claim petition was contested by the present appellant who was respondent No.3 in the said claim petition (hereinafter parties will be referred as claimants and respondents as in original claim petition for sake of convenience).

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

1. Whether the accident resulting into death of Mahipal had

taken place on 12.12.2017 on account of rash and negligent driving of bus bearing No.HR-55-R-4309 by respondent No.1, if so its effect? OPP

2. If issue No.1 is proved, to what amount of compensation the petitioners are held entitled and form whom? OPP

3. Whether the vehicle was being driven in contravention of terms and conditions of insurance policy? OPR

4. Relief.

5. To prove their case, claimants examined PW1-Neelam widow of Mahipal, PW2-Mohd. Waris, Record Keeper, Civil Hospital, Gurugram, who produced post mortem report of deceased Mahipal as Ex.P1 and PW3-Sandeep Kumar, Criminal Ahlmad, who brought on record of challan under Section 173 Cr.P.C. as Ex.P3 pertaining to FIR No.763 dated 13.12.2017 registered under Sections 279 and 304-A IPC at Police Station, Badshahpur, Gurugram, regarding the accident in question. The claimants also examined PW4-Suresh Chand, who is the eyewitness of the accident and author of the aforesaid FIR and PW5-Surender, who is also the eyewitness of the accident.

6. The claimants also relied upon the following documents:-

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|-------|--|
| Ex.P1 | Copy of postmortem report of deceased Mahipal |
| Ex.P2 | Certified copy of charge sheet dated 07.05.2018 served upon respondent No.1. |
| Ex.P3 | Certified copy of report under Section 173 Cr.P.C. |
| Ex.P4 | Certified copy of Ex.PW1/F to Ex.PW1/G |
| Ex.P5 | Certified copy of statement of ASI Krishan |

No.194

Ex.P6 Certified copy of notice under Section 133
of M.V.Act

Ex.P7 Copy of First Information Report

7. To rebut the evidence of the claimants, respondents have not
examined any witness.

8. After appreciating the evidence brought on record, the Tribunal
reached at the conclusion that the accident in question in which Mahipal
lost his life was caused due to the rash and negligent driving of the
offending vehicle by respondent No.1.

9. The Tribunal by considering the monthly income of deceased
as Rs.14,000/-, by taking his age to be 28 years, applied the multiplier of
'17' and after considering that 40% were required to be given towards the
future prospects and the claimants were also entitled for compensation
under the conventional heads, calculated the compensation as under:-

(i)	Monthly income of Mahipal at the time of his death plus 40% future prospects.	Rs.14,000+5600=19,600/-
(ii)	1/3 rd amount is to be deducted towards personal living expenses of deceased in view of <u>Sarla Verma's case (supra)</u>	Rs.19,600-6533=13,067/- (rounded Rs.13,100/-)
(iii)	Annual income for the purpose of awarding compensation	Rs.13100x12=1,57,200/-

(iv)	Multiplier is to be applied in accordance with age of the deceased, who was in the age group of 26 to 30 years at the time of accident as per <u>Sarla Verma's case (supra)</u>	Rs.1,57,200 x 17= 26,72,400/-
(v)	Compensation comes to	Rs.26,72,400/-
(vi)	Loss of estate	Rs.15,000/-
(vii)	Loss of consortium	Rs.40,000/-
(viii)	Funeral expenses	Rs.15,000/-
	Total amount of compensation comes to:-	Rs.27,42,400/-

10. The claim petition was partly allowed with costs and claimants were awarded a sum of Rs.27,42,400/- as compensation on account of death of Mahipal, caused in the accident in question alongwith interest @ 7% per annum if the compensation amount is deposited within 45 days from the date of this award, failing which they shall be entitled to recover the same along with interest @ 9% per annum from the date of institution of the petition till final realization of the compensation amount. All the respondents were held liable jointly and severally to pay the amount of compensation and it was held that respondent No.3-Insurance Company shall be liable to pay the compensation amount as on the date of accident the offending vehicle was insured with it.

11. The appellant-Insurance Company being aggrieved by the impugned award dated 06.12.2022 has filed the present appeal.

12. I have heard learned counsel for the appellant and have gone through the relevant record.

13. It has been contended by learned counsel for the appellant that the Tribunal has failed to appreciate that the vehicle in question bearing registration No.HR-55R-4309 was not involved in any accident as alleged. Due to this reason the registration number and description of the vehicle did not find mention in the FIR. FIR qua the accident was lodged on 13.12.2017, wherein it has been alleged that some unknown driver of unknown vehicle had caused the accident, who was driving the vehicle in a negligent manner. He has further contended that it is also surprising that the owner of the said vehicle i.e. respondent No.2 himself produced respondent No.1 i.e. driver before the police after 10 days of registration of FIR. He has argued that from the testimony of PW4-Suresh Chand and PW5-Surender, it is made out that it was a case of 'hit & run'. He has submitted that the Tribunal has given the finding of involvement of the offending vehicle in the accident simply for the reason that respondent No.1 Sandeep Kumar, driver of the offending vehicle is facing the trial. He has argued that the claimants have failed to prove the rash and negligent driving by respondent No.1, so the claim petition is liable to be dismissed on this ground and the award be set aside.

14. As the original claim petition has been filed by the claimants under Section 166 of the Motor Vehicles Act, 1988, so it was incumbent upon the claimants to prove that the accident in question had taken place due to rash and negligent driving of the offending vehicle by respondent No.1 in which deceased Mahipal lost his life. To prove the same the

claimants have examined two eyewitnesses of the accident in question. PW4-Suresh Chand is the eyewitness of the accident as well as he is also author of FIR No.763 dated 13.12.2017 registered under Sections 279 and 304-A IPC at Police Station, Badshahpur, Gurugram. The perusal of his testimony reveals that he has given a detailed account regarding manner of happening of the accident due to rash and negligent driving of respondent No.1 resulting in death of Mahipal. He has been duly corroborated by PW5 Surender the other eyewitness of the accident.

15. Though in the FIR registered regarding the accident in question, the name of the driver and the number of the offending vehicle are not mentioned but it is to be taken note of that the FIR (Ex.P7) was registered promptly without any loss of time.

16. The medical ruqa has also been placed on record which reveals that on 12.12.2017, deceased Mahipal was brought to Vatika Hospital as a roadside accident case, where he was declared dead by the doctors.

17. During the investigation conducted by the Investigating Officer, he had given notice under Section 133 of the Motor Vehicles Act to the owner of the offending vehicle i.e. respondent No.2, who reported that on 12.12.2017, the offending vehicle bearing No.HR-55R-4309 was being driven by Sandeep. After completion of the investigation challan under Section 173 Cr.P.C. was submitted against respondent No.1 which has been proved on record by PW3-Sandeep Kumar, Criminal Ahlmad. As per his testimony, respondent No.1 has already been charge sheeted under Section

279 and 304-A IPC in FIR No.763 dated 13.12.2017 registered under Sections 279 and 304-A IPC at Police Station, Badshahpur, Gurugram and he has been facing trial. This witness has also proved that the driving licence of respondent No.1 was issued in his name and the registration certificate had been issued in the name of respondent No.2. He has also proved the insurance police and permit of the offending vehicle. So once the challan had been presented against respondent No.2 and he is facing the criminal trial qua the accident in question, then the identity of the driver of the offending vehicle is duly established. Moreover, respondents have not led any evidence to rebut this evidence of the claimants and the same has remained unrebutted. Even respondent No.1 did not bother to step into the witness box in order to prove that he was not the author of the accident in question, for which the adverse inference is to be drawn against the respondents.

18. It is trite law that in the motor vehicle accident claims cases, the burden of proof on the claimants, is not that heavy as is required to prove a criminal charge for rash and negligent driving of the vehicle.

19. So from the testimony of PW4 and PW5, registration of FIR, presentation of challan under Section 173 Cr.P.C. against respondent No.1, respondent No.1/ driver of offending vehicle has been rightly held liable for causing death of Mahipal by driving the offending vehicle in a rash and negligent manner. The evidence on record has been rightly appreciated by the Tribunal on the basis of preponderance of probabilities.

FAO-1234-2023 (O&M) - : 9 : -

20. In view of the above, there is no merit in the present appeal and the same is dismissed in limine being devoid of any merits.

21. All pending applications, if any, stands disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

25.01.2024
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Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No