

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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FAO-1208-2024 (O&M)

Date of Decision : 03.05.2024

ROYAL SUNDARAM GENERAL INSURANCE CO. LTD.Appellant

VERSUS

KAMLESH KAUR & ORS.

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. D.K. Prajapati, Advocate for the appellant.

Mr. Jagjit Singh Chatrath, Advocate for respondents No.1 to 4.

ALKA SARIN, J. (ORAL)

CM-4822-CII-2024

1. This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 16 days in filing the appeal.
2. For the reasons stated in the application, the same is allowed and delay of 16 days in filing the appeal is condoned.

CM-7249-CII-2024

3. This is an application for passing an appropriate order in the application for stay of execution of the award dated 15.11.2023 passed by the Motor Accident Claims Tribunal, SAS Nagar (Mohali).
4. Mr. Jagjit Singh Chatrath, Advocate has appeared and has filed his memorandum of appearance on behalf of respondents No.1 to 4. The same is taken on record.
5. Learned counsel for the parties are *ad idem* that instead of hearing the application for stay the main case itself be heard. With the consent of counsel for the parties, main case is taken on Board today itself.

FAO-1208-2024

6. Present appeal has been preferred by the Insurance Company aggrieved by the award dated 15.11.2023 passed by the Motor Accident Claims Tribunal, SAS Nagar (Mohali).

7. The brief facts relevant to the present case are that on 05.12.2021 Gurmeet Singh along with wife, namely, Kamlesh Kaur, who is the claimant-respondent No.1, after meeting their relatives at Kharar were going to their house at Village Kathgarh, District Shaheed Bhagat Singh Nagar (Nawanshahr) on a motorcycle bearing registration No.PB-32-U-5232. Gurmeet Singh (since deceased) was stated to have been riding the motorcycle at a slow speed and on the correct side of the road. Ajit Singh (brother of Gurmeet Singh) was coming behind them on his own motorcycle and at about 4:30 pm when they reached near Village Chakla on Chandigarh-Ropar Highway, a car bearing registration No.HR-01-AD-7032 came from behind which was being driven at a high speed and in a rash and negligent manner and after overtaking Ajit Singh struck the motorcycle of Gurmeet Singh. Due to the accident Gurmeet Singh fell on the sewerage manhole and received head injuries as well as other injuries. The pillion rider, who was the wife of the deceased, was also injured in the said accident. The driver of the car did not stop and he sped away. The injured were taken to Civil Hospital, Rupnagar from where Gurmeet Singh (since deceased) was referred to PGI, Chandigarh where he succumbed to his injuries on the next date i.e. 06.12.2021. On the basis of the statement of Ajit

Singh, FIR No.92 dated 06.12.2021 under Section 279, 304-A, 427, 337 Indian Penal Code, 1860 was registered at Police Station Singh Bhagwantpura, District Rupnagar. Claim petition was preferred by the claimants. The Tribunal, on the basis of the pleading of the parties, awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.71,013/-
2	Annual income	[Rs.71,013/- x 12] = Rs.8,52,156/-
3	Income Tax	[Rs.8,52,156/- - Rs.80,000/-] = Rs.7,72,156/-
4	Future prospects 15%	[Rs.7,72,156/- + Rs.1,15,823/-] = Rs.8,87,979/-
5	Deduction 1/4 th	[Rs.8,87,979/- - Rs.2,21,995/-] = Rs.6,65,984/-
6	Multiplier of 11	[Rs.6,65,984/- x 11] = Rs.73,25,824/-
7	Funeral expenses	Rs.15,000/-
8	Loss of estate	Rs.15,000/-
9	Loss of consortium	Rs.40,000/-
10	Total Compensation	Rs.73,95,824/-
	Interest	7% per annum

8. Aggrieved by the same, the Insurance Company has preferred the present appeal.
9. Learned counsel for the appellant-Insurance Company would contend that the present was a hit and run case and that the number of the vehicle was introduced in collusion with the driver and owner of the vehicle involved. It is further the contention that the FIR was registered on the next day and that in the criminal case the prosecution witnesses have not supported the prosecution version.

10. Per contra, learned counsel for the claimant-respondents No.1 to 4 would contend that in the present case the wife of the deceased, namely, Kamlesh Kaur had stepped into the witness box as PW-1. She was an eye-witness to the said accident and after being subjected to lengthy cross-examination nothing could be elicited. It is further the contention of the learned counsel for the claimant-respondents No.1 to 4 that RW-2 i.e. HC Sandeep Kumar also stepped into the witness box and stated that information regarding the accident was received at the Police Station on 05.12.2021 itself. The FIR was recorded on the statement of Ajit Singh son of Sohan Singh against an unknown person driving car bearing registration No.HR-01-AD-7032. It is further the contention that the Hon'ble Supreme Court in the case of **Sunita & Ors. Vs. Rajasthan State Road Transport Corporation & Anr. [(2020) 13 SCC 486]** has held that 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.

11. Heard.

12. In the present case the argument of the learned counsel for the appellant-Insurance Company that it was a hit and run case and that the vehicle was involved at a later stage since it was insured deserves to be rejected. HC Sandeep Kumar, a witness produced by the respondents themselves, stepped into the witness box as RW-2 and clearly stated that the

information of the accident was received at the Police Station on 05.12.2021 and that the FIR was recorded against an unknown person, however, the car was stated to be bearing registration No.HR-01-AD-7032. Hence, the argument of the learned counsel for the appellant-Insurance Company that the car number was introduced later on cannot be accepted. Still further, the wife of the deceased, namely, Kamlesh Kaur who was riding as a pillion rider along with the deceased, stepped into the witness box as PW-1. She was subjected to lengthy cross-examination and nothing could be elicited in the cross-examination to even remotely suggest that the present was a hit and run case and that the offending vehicle was introduced later.

13. The Hon'ble Supreme Court in the case of **Sunita & Ors.** (supra) has held 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 judgment 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”.*

14. Keeping in view the law laid down by the Hon’ble Supreme Court and the fact that the wife of the deceased who was pillion riding the motorcycle had stepped into the witness box and despite lengthy cross examination her testimony could not be shaken, this Court finds no merit in the present appeal. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

03.05.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

NOTE: *Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*