

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2550-2024 (O&M)
Reserved on: 21.10.2024
Pronounced on: 29.10.2024

SHRI RAM GENERAL INSURANCE CO. LTD.

VS.
DAVINDER KAUR AND OTHERS

... APPELLANT

... RESPONDENTS

CORAM: HON’BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rajbir Singh, Advocate, for the appellant.

Mr. Amandeep Singh, Advocate,
for respondent Nos.1 to 4-Caveators.

DEEPAK GUPTA, J.

This appeal, by Insurance Company of the offending vehicle, is directed against award dated 27.09.2023 passed by Id. Motor Accident Claims Tribunal, Ludhiana [for short ‘the Tribunal’], whereby compensation of ₹42,28,281/- has been allowed in MACP Case No.279 of 2017 titled ‘*Davinder Kaur and others Vs. Dalip Kumar and others*’, filed under Section 166 of the Motor Vehicle Act 1988 [for short ‘the Act’], arising out of a motor vehicular accident, which took place on 10.04.2017

2.1 According to the case pleaded by the claimants (*respondents N: 1 to 4 herein*), on 10.04.2017, Gurdeesh Singh (*since deceased*) was going from Ludhiana to Bheeta, District Patna (Bihar) in Truck bearing No.PB-23-C-8535 owned by claimant No.1-Davinder Kaur, loaded with goods of the Hero Company. The said truck was being driven by Ram Lal Dass. Gurdeesh Singh was sitting beside him (Ram Lal Dass) in the said truck. At about 8.00 AM, when they reached near Arkha, Manau Ka Indra in the area of Police Station Uchahar, District Raebareli, the offending Truck bearing registration No.UP-33-T-4795 being driven by Parmod Kumar (*respondent No.1A herein*) came in rash and negligent manner at high speed from Allahabad side and struck against the truck occupied by the deceased, by coming on the wrong side.

Due to this collision, Gurdeesh Singh sustained multiple and grievous injuries on various parts of his body and died on the spot. FIR No.166 dated 15.04.2017 under Sections 279, 337, 338, 304A and 427 IPC was registered at Police Station, Uchahar, Raebareli (UP).

2.2 It was claimed that deceased was 40 years of age; he was the only bread winner of the family; he was running and managing the business of transportation; and used to earn ₹25,000/- per month. All the claimants, who are the widow, children and mother of the deceased were dependent upon him. Prayer was made to grant compensation of ₹70 lakh.

2.3 The driver and owner of the offending truck (*respondent No.5 and 1A herein*) did not contest the petition, inasmuch as owner-Dalip Kumar, despite the fact that he was allowed to join the proceedings, did not file any written statement; whereas driver-Parmod Kumar did not file written statement and as such his defence was to be struck off.

2.4 Only insurance company (*appellant herein*) contested the petition, which pleaded that accident took place on account of rash and negligent driving of Ram Lal Dass, who was driving truck No.PB-23-C-8535, in which the deceased was traveling. Certain other preliminary objections were also raised.

2.5 Necessary issues were framed. Evidence produced by both the parties was taken on record. The Tribunal found that accident took place on account of sole rash and negligent driving of offending truck No.UP-33-T-4795, which was being driven at the relevant time by respondent No.1A-Parmod Kumar. On the point of compensation, the last income tax return of the deceased, revealing his annual income to be ₹2,95,700/-, was taken into consideration and by applying the legal position in ***“Sarla Verma and others v. Delhi Transport Corporation and another”, (2009) 6 Supreme Court Cases 121***, and ***“National Insurance Company Limited v. Pranay Sethi and others” 2017(4) RCR (Civil) 1009***, the compensation was assessed.

3. The Insurance Company, by way of the present appeal assails the finding of the Tribunal on the point of negligence.

4.1 The sole contention raised by Id. counsel for the appellant-Insurance Company is that it was at least the case of contributory negligence, as it was a head on collision between the two trucks. Id. counsel argues that statement of PW-2 Jagdev Parshad Panday, was not liable regarding the manner of accident so as to hold only the offending truck to be responsible for causing the accident. It is also the contention of Id. counsel for the Insurance Company that cross FIR No.295 dated 13.07.2017 was registered against driver-Ram Lal Dass of the truck in which the deceased was travelling and that driver of the offending truck i.e. Parmod had also filed a claim petition against the driver, owner and insurer of the truck in which the deceased was travelling.

4.2 Id. counsel has prayed that the compensation amount, as assessed by the Tribunal, be apportioned in the ratio of 50:50 between the respective driver, owner and Insurance Company of the two trucks.

5. Refuting the aforesaid contentions, Id. counsel for the claimants contends that Tribunal after taking into account all the facts and evidence on record has rightly held that the offending truck was responsible for causing the accident. There was no evidence to rebut the statement of PW2-Jagdev Parshad Panday regarding the manner of accident. Attention is drawn towards the fact that driver and owner of the offending vehicle did not contest the petition. Id. counsel has also placed on record copy of the award dated 18.09.2024, passed by MACT, Raebareli in MACT case No.318 of 2017 showing that the claim petition as filed by Parmod Kumar-Driver of the offending truck, was dismissed by the MACT, Raebareli.

6. I have considered submissions of both the sides and have appraised the record carefully.

7. To support his contention of contributory negligence, Id. Counsel for the appellant - insurance company has referred to ***Bijoy Kumar Dugar Vs. Bidyadhar Dutta and others, 2006(2) RCR (Civil) 590 (SC)*** and ***Gurmeet Kaur and another Vs. Mohinder Singh and others, 2006(1) PLR 684 (P&H)***, where in the cases of head on collision, the court had found that it

was a case of contributory negligence and the compensation amount was directed to be apportioned amongst two vehicles accordingly.

8. I am afraid that the authorities cited by Id. counsel for the Insurance Company are not applicable to the facts of the present case. It cannot be universal principle that as and when there is a head on collision between two vehicles, the Court should come to a conclusion that it was a case of contributory negligence. It would depend upon the facts and circumstance of each case and the evidence brought on record in this regard so as to come to the conclusion as to whether both the vehicles were responsible for causing accident or whether the accident was caused due to rash and negligent driving of one of the vehicle.

9. In this regard reference can be made to ***Sewa Rani and others Vs. Gurwaryam Singh and others, 2024(1) Law Herald 158***, wherein this Court categorically held that in the absence of any evidence, it cannot be held that there was contributory negligence. The contributory negligence cannot be presumed simply because it was a case of head on collision. In ***National Insurance Company Ltd. Vs. Mr. Tulshidas L. Kerkar and others, 2023 AAC 138***, there was head on collision between Tata tipper truck and a Mini bus. Composite negligence was pleaded by the insurance company. The question was regarding the fixation of negligence on the driver of the truck. There was evidence of two eye-witnesses, which established that accident was caused due to negligence of Tata tipper truck. It was held in these facts and circumstances by the Bombay High Court that merely because witnesses in their deposition admitted to knowing bus driver, no reference could be drawn that their testimonies were not truthful. The negligence fixed on the truck driver was held to be proper.

10. Coming to the facts of the present case, it has come in the testimony of PW2-Jagdev Parshad Panday that on 10.04.2017 i.e. on the date of accident, he was working in his fields along with other family members when at about 8:00 AM, the accident took place. He testified that accident occurred due to rash and negligent driving of respondent No.1A-Parmod Kumar, who was coming from the Allahabad side i.e. opposite side and hit

the truck in which the deceased was travelling. It is also testified that he along with the other locals brought out the injured-Gurdeesh Singh from the truck and shifted him to the hospital. The witness has been cross-examined at length by the opposite counsels, but nothing could be elicited so as to disbelieve him.

11. It is important to notice that the driver of offending truck-Parmod Kumar did not enter the witness box so as to controvert the statement of PW2-Jagdev Parshad Panday regarding the manner of accident. It has already been noticed that said Parmod Kumar did not even file any written statement so as to controvert the case of the claimants, in which the negligence of the offending vehicle was pleaded. These circumstances are in itself sufficient to draw adverse inference against the driver of the offending vehicle to the effect that had he entered the witness box, he could not have faced the cross-examination.

12. Apart from above, the police after recording the FIR No.166 dated 15.04.2017, investigated the matter and found the driver of the offending truck to be responsible for causing the accident. Report under Section 173 CrPC was filed in the court and respondent No.1A-Parmod Kumar was accordingly charge-sheeted by the Court. Contrary to the same, cross FIR No.295 was lodged on 13.07.2017 i.e. after three months of the accident, which in itself is sufficient to infer that the said FIR was lodged just to wriggle out of the liability.

13. As noticed above, Id. counsel for the claimants has also placed on record copy of the award dated 18.09.2024 passed by the MACT, Raebareli, indicating that the claim petition, as filed by the Parmod Kumar, the driver of the offending vehicle, seeking compensation against the driver, owner and insurer of the truck, in which the deceased was travelling, has already been dismissed.

14. On account of entire discussion as above, it is held that the Tribunal did not commit any error in coming to the conclusion that accident occurred due to rash and negligent driving of the offending truck and rightly

held that it is the Insurance Company of the said vehicle, which was statutorily liable to pay the entire compensation amount as assessed by the Tribunal.

15. No other point was urged before this Court.
16. Consequent upon the aforesaid discussion, this Court does not find any merit in the present appeal and as such, the same is hereby dismissed.

29.10.2024
Vivek

(DEEPAK GUPTA)
JUDGE

	Whether speaking/reasoned?	Yes
	Whether reportable?	No