IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.207(2 cases)

Case No. : FAO No. 7363 of 2010

Decided On : January 08, 2024

National Insurance Company .... Appellant

vs.

Smt.Sunil and others .... Respondents

Case No. : FAO No. 3083 of 2011

Decided On : January 08, 2024

Smt.Sunil and others .... Appellants

vs.

Ramesh Kumar and others .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Aseem Aggarwal, Advocate
for the appellant/Insurance Company in FAO-7363-2010 and
for respondent no.3/Insurance Company in FAO-3083-2011.

Mr. Gaurav Mohunta, Advocate
for the appellants/claimants in FAO-3083-2011 and
for the respondents no.1 to 6/claimants in FAO-7363-2010.

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GURBIR SINGH, J. :

1. By this common judgment, the aforesaid two appeals are being disposed of as these have arisen from the same Award. Vide Award dated 11.11.2010, passed by learned Motor Accident Claims Tribunal, Rohtak (for brevity - Tribunal), the claimants of the deceased Naresh Kumar, who died in a motor vehicular accident, were held entitled for an amount of compensation of Rs.24,50,000/-. The owner, driver and the insurer of Alto LXI car bearing registration No.HR-26AP/8833 (hereinafter referred to as –

offending vehicle) were jointly and severally held liable to pay the said amount of compensation to the claimants, which shall be mainly indemnified by National Insurance Company (for brevity – Insurance Company).

2. **FAO No.7363 of 2010** has been filed by the Insurance Company against the said award whereas **FAO No.3083 of 2011** has been filed by the claimants for enhancement of the amount of award.

3. For the sake of convenience, the parties herein are being addressed as per their status before the Tribunal.

4. The facts, in brief, necessary for the disposal of these appeals, are that the claimants are widow, three minor children and parents of Naresh Kumar (since deceased), who was 39 years old, at the time of his death. He was serving as a Constable in Delhi Police and his monthly income was Rs.20,249/- per month. On 30.04.2009, at about 10:15 PM, Naresh Kumar was returning after finishing his duty, from Delhi to Prem Nagar, Rohtak by foot. When he reached near Canal Rest House, Rohtak, an Alto LXI car bearing registration No.HR-26-AP-8833 (hereinafter referred to as – the offending vehicle) came at high speed, which was being driven by respondent no.1 – Ramesh Kumar in rash and negligent manner and he hit Naresh Kumar with his car. He received multiple grievous and serious injuries and died on the spot due to injuries suffered in the accident. The driver Ramesh Kumar fled from the spot. Post-mortem of the dead body was conducted. Devender – nephew of the deceased lodged report, on the basis of which FIR No.202 dated 01.05.2009, under Sections 279/304-A IPC was registered at Police Station Civil Lines, Rohtak. All the claimants were fully dependent upon the deceased. Claim petition has been filed for grant of Rs.60 lakhs as compensation.

5. Respondents no.1 and 2 contested the petition and filed written statement. It was denied that respondent no.1 was driving the vehicle at a high speed, rashly and negligently. The deceased came on the road in a hurry and without caring for the traffic on the road and he intended to cross the road without obeying the traffic rules. The driver of the offending vehicle tried his best to avoid the accident but due to crossing of road by deceased Naresh Kumar in a negligent manner, the accident took place. There is no fault on the part of driver Ramesh Kumar.

6. Respondent no.3 – Insurance Company also filed separate written statement while taking preliminary objections that driver of the offending vehicle was not holding valid driving license at the time of accident. Respondent no.2 – owner of the offending vehicle did not inform the Insurance Company that the accident had taken place, which is in violation of terms of insurance policy. On merits, involvement of the driver of the offending vehicle in causing the accident was denied. It was specifically pleaded that no accident had taken place and respondent no.1 was wrongly implicated in a criminal case. So, dismissal of petition was prayed.

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

> ***"1.*** *Whether the accident in question resulting into the death of Naresh Kumar son of Manphool Singh occurred due to rash and negligent driving of vehicle bearing No.HR-*

26-AP/8833 by respondent no.1? OPP

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

3. *Whether there is willful violation of terms and conditions of insurance policy, if so to what effect? OPR-3*

4. *Relief.***"**

8. In support of their case, the claimants examined Devender as PW-1, who proved the copy of FIR Ex.P-1, registered on his statement; Sunil, widow of deceased, who stepped into witness box as PW-2. The claimants also examined Constable Amrit Singh as PW-3, who brought the service book of deceased Naresh Kumar (since deceased) and deposed that date of birth of the deceased was 15.06.1970. The claimants further examined Head Constable Ram Chander as PW-4, who brought the salary details (Ex.P-6) of the deceased. Gulshan Khera, Criminal Ahlmad was examined as PW-5, who brought the record and deposed that he had brought the summoned file titled **'**State vs. Ramesh Kumar' – FIR No.202 dated 01.05.2009, under Sections 279/304-A IPC, registered at Police Station Civil Lines, District Rohtak and deposed that the case was fixed for evidence of prosecution after framing of charge. ASI Krishan Kumar, the Investigating Officer of the case was examined as PW-6, who deposed that during investigation, one Rajmal son of Dalip Singh came to the police post and got his statement recorded. On the basis of his statement, vehicle bearing registration No.HR-26AP/8833 was taken into custody and Ramesh Kumar was arrested. RC and insurance policy of the offending vehicle were taken into possession. Rajmal son of Dalip Singh was examined as PW-7. Thereafter, the claimants closed their evidence.

9. After examining Driver of the offending vehicle Ramesh Kumar as RW-1, the respondents also closed their evidence.

10. After hearing the respective parties and appreciating the evidence on record, the learned Tribunal held that the accident in question was caused by Ramesh Kumar – respondent no.1 by driving the offending vehicle in rash and negligent manner, thereby causing injuries to Naresh Kumar, who died at the spot due to said injuries. The Award was accordingly passed and respondents were held jointly and severally liable to pay the amount of compensation to the claimants.

11. Learned counsel for the appellant-Insurance Company has argued that it is only on the basis of the statement made by one Rajmal PW-7 that the driver Ramesh Kumar made an extra-judicial confession to him that he hit one person coming on-foot with his vehicle, ASI Krishan Kumar – PW-6, without any other evidence, implicated the Car bearing No.HR-26AP-8833 and driver. Though the Tribunal has doubted said version of Rajmal PW-7, but since criminal case was pending against respondent No.1, he was held responsible for the accident. The story of impleading the vehicle in question is highly improbable and has been made in collusion with respondent Nos.1 and 2. There are many contradictions in the statement of PW-6 and PW-7. PW6 stated that the factum of accident was told to Rajmal by the owner of the vehicle whereas PW-7 Rajmal stated that the factum of accident was told by Devender. It is highly improbable that PW-7 met the driver 1½ months after the accident and the driver confessed before him by way of extra-judicial confession that one Naresh had died in the accident with his vehicle. But it is not understandable as to how the driver came to know the name of the deceased as Naresh when he had already fled away from the spot. No reason is coming forth why the driver made his extra-judicial confession before PW-7 and not reported the matter to the police. There was no justification for him to be present at the spot when he was to go Dighal. Merely facing criminal trial does not impute the involvement or negligence of the alleged driver of the offending vehicle. It is further contended that compensation has been assessed on higher side by taking the income as Rs.20,249/- per month. Necessary deductions have not been applied and wrong multiplier has been adopted.

12. Learned counsel for the claimants has argued that the accident was caused by respondent no.1 Ramesh Kumar, thereby causing death of Naresh Kumar, by driving the offending vehicle in rash and negligent manner. The police, during investigation, nominated him and he was arrested. Respondents no.1 and 2 have not denied the accident in the written statement. Rather, only negligence on the part of driver Ramesh Kumar has been denied. Ramesh Kumar RW-1 has not denied the accident in his statement. The learned Tribunal has rightly held that respondent no.1 was responsible for causing death of Naresh Kumar by driving the offending vehicle in rash and negligent manner.

13. I have heard the submissions of learned counsel for the parties and have gone through the record.

14. The accident in question took place on 30.04.2009 at about 10:15 PM. FIR (Ex.P-1) was registered at 00:35 hours on 01.05.2009. Thus, there was prompt lodging of FIR against the unknown vehicle and driver. Under such circumstances, it is the duty of the police to investigate and bring guilty to the book. During investigation, Rajmal made statement to the Investigating Officer that Ramesh Kumar driver met him at Gohana bus stand. He was having a car bearing No.HR-26AP/8833. He was already a driver on his truck. On enquiry, whether he was still taking drinks, he told that he had left drinking. He further told that about 1½ months back, while returning from Jind after leaving his owner, when he reached near PWD Canal Rest House, one person was coming on foot from the opposite direction and he hit that person. It was a sudden accident and he told, that is why he had left the drinks. In the cross-examination, he stated that Devender, who was nephew of deceased Naresh Kumar, was transporter with him and that is why, he went to police post to lodge the report. No suggestion was given to this witness that Ramesh Kumar did not make any statement before him. When Ramesh Kumar stepped into the witness-box as RW-1, he has fully supported the version of claimants. He admitted in the cross-examination that he was facing trial. No suggestion was given to him that he did not cause the accident. The Insurance Company has not brought the evidence to rebut the evidence of PW-6, PW-7 and RW-1 Ramesh Kumar.

15. An MACT case is like a Civil Case and facts are to be proved on the basis of preponderance of probabilities. The evidence recorded by the learned Tribunal is to be seen for disposal of the claim petition. In case **Sunita and others vs. Rajasthan State Road Transport Corporation and another** reported as **(2019) 2 ACJ 801**, it is held by Hon'ble Supreme Court that the opposite party failed to establish that the deceased was himself negligent. Driver of bus was held to be rash and negligent in causing the accident. In case **National Insurance Co. Ltd. vs. Chamundeswari and others reported as 2021 ACJ 2558**, it has been held by Hon'ble Supreme Court that if any evidence before the Tribunal runs contrary to the contents of FIR, then the evidence recorded before the Tribunal has to be given weightage over FIR. In case **Kusum Lata and others vs. Satbir and others** reported as **2011(3) SCC 646**, Hon'ble Supreme Court held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. In case **Ranjit Kaur vs. Chinder Pal Singh and others** reported as **2006(4) RCR (Civil) (Pb.) 702**, it is held that negligence has to be determined on the basis of evidence on the file and not merely on the basis of DDR or FIR.

16. In the case in hand, the driver and owner of the offending vehicle have not denied the accident. A person makes confession to relieve himself from the burden which he is carrying due to some act. The argument of learned counsel for Insurance Company, as to why driver Ramesh Kumar had made extra-judicial confession, cannot be accepted. The answer is to relieve his conscious. Moreover, the challan has already been presented in the case and charge has also been framed against driver Ramesh Kumar, who is facing trial for the alleged offence of causing the accident and killing

Naresh Kumar by driving the offending vehicle in rash and negligent manner. Learned Tribunal has rightly placed reliance on the case of **Girdhari Lal vs. Radhey Shyam** – **1993(2) PLR 109**. In the case in hand, the learned Tribunal has rightly held that the driver of the offending vehicle Ramesh Kumar has caused the accident by driving the vehicle in rash and negligent manner.

17. Learned counsel for the claimants has argued that income of the deceased has been taken on the lower side. Multiplier applied was 15 instead of 16. All the claimants are entitled to consortium. The deduction from income of the deceased has not been properly taken into consideration. The interest is awarded @ 7.5% per annum which is on the lower side.

18. Learned counsel for the Insurance Company has argued that the compensation awarded to the claimants is on higher side. The father of deceased cannot be considered to be dependent upon him.

19. At the time of accident i.e. on 30.04.2009, deceased Naresh Kumar was 39 years of age as his date of birth is 15.06.1970. From the salary slip (Ex.P-6) of the deceased, it is proved that the deceased was earning gross salary of Rs.20,249/-. The deceased left behind his widow, three minor children and his parents. In the absence of any evidence, it cannot be said that the father was not dependent upon the deceased. Naresh Kumar was serving as a Constable in Delhi Police and was in permanent employment. The learned Tribunal, after making deductions of HRA and transportation charges, held that the deceased could be held to be earning around Rs.18,000/- per month which is correctly taken into consideration.

Keeping in view that there were six dependents, the Tribunal has rightly taken 1/4th of his income as deduction, as his personal expenses. As per the law laid down by Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi and others** reported as **2017 SCC Online SC 1270**, 50% of the income of the deceased is to be added as future prospects as he was in permanent employment. In case **Magma General Insurance Company Limited vs. Nanu Ram and others** reported as **(2018) 18 SCC 130**, it is held that the term "consortium" encompasses 'spousal consortium', 'parental consortium' as well as 'filial consortium'. The said judgment was later followed by a higher Bench of Hon'ble Supreme Court in **United India Insurance Company Limited vs. Satinder Kaur @ Satwinder Kaur and others** reported as **2021(11) SCC 780**. Thus, the amount of compensation is assessed as under :-

No.	**Head**	**Compensation Awarded**
01.	Monthly Income	Rs.18,000/-
02.	Adding Future Prospects @ 50%	Rs.18,000/- + Rs.9,000/- = Rs.27,000/-
03.	Deduction @ 1/4th	Rs.6,750/-
04.	Net Income	Rs.27,000/- – Rs.6,750/- = Rs.20,250/-
05.	Multiplier (age 39 yrs.)	15
06.	Total Income	Rs.20,250/- x 12 x 15 = Rs.36,45,000/-
07.	Loss of Estate	Rs.15,000/-
08.	Funeral Expenses	Rs.15,000/-
09.	Consortium	Rs.40,000/- x 6 = Rs.2,40,000/-
10.	**TOTAL**	**Rs.39,15,000/-**
11.	Compensation awarded by Tribunal	Rs.24,50,000/-
12.	Amount of enhanced Compensation	**Rs.14,65,000/-**

20. Thus, the total amount of enhanced compensation payable to the claimants is Rs.14,65,000/-, with interest @ 7.5% per annum from the date of filing of claim petition till actual payment. The Insurance Company, driver and owner shall be jointly and severally liable to make the payment of compensation. Since the offending vehicle was validly insured with the Insurance Company, liability to pay the compensation shall be of the appellant Insurance Company. The amount of enhanced compensation shall be disbursed amongst the claimants, in the ratio of 50% to claimant no.1, 12% each to claimants no.2 to 4 and 7% each to claimants no.5 and 6.

21. In view of the above discussion, the appeal filed by Insurance Company i.e. **FAO No. 7363 of 2010** is hereby dismissed and the second appeal filed by the claimants i.e. **FAO No. 3083 of 2011** is partly allowed in the above terms.

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

23. A photocopy of this judgment be placed on the file of other connected appeal.

January 08, 2024 **(GURBIR SINGH)**
monika **JUDGE**

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