

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1356-2017 (O&M)
Date of decision : 30.04.2024

National Insurance Company Ltd ... Appellant(s)

Versus

Rani and Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Suvir Dewan, Advocate for the appellant.

Mr. Harsh Gupta, Advocate for
Mr. H.P.S. Sandhu, Advocate for respondent Nos.1 and 3.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the appellant-Insurance Company challenging the award dated 28.10.2016 passed by the Motor Accident Claims Tribunal, Ludhiana.

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.

3. Learned counsel for the appellant-Insurance Company would contend that earlier the Tribunal had passed an *ex-parte* award dated 25.4.2014 for an amount of Rs.8,82,500/- while assessing income of the deceased as Rs.4,500/- per month which was later on set aside and thereafter the Tribunal passed the impugned award dated 28.10.2016 for an amount of

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Rs.12,22,650/- by assessing income of the deceased as Rs.7,000/- per month. He would further contend that there was no material before the Tribunal to assess the income of the deceased as Rs.7,000/- per month instead of Rs.4,500/- per month. The next contention of the learned counsel is that there was no negligence on the part of the driver of the offending vehicle inasmuch as there was no eye-witness of the accident and the driver has since been acquitted by the Court in the State case.

4. Per contra, the learned counsel for the respondent Nos.1 and 3 has contended that the accident stood proved by Sukhchain Singh who stepped into witness box as CW2 and his testimony could not be shaken in the cross-examination. It is further the contention of the learned counsel that the Tribunal has rightly assessed income of the deceased as Rs.7,000/- per month and that there is no error in the impugned award passed by the Tribunal.

5. Heard.

6. In the present case the accident had taken place on 19.12.2012. As per the statement of CW1-Rani, the deceased was 40 years of age at the time of the accident and he was working as a Mason and was earning Rs.15,000/- per month and was also helping the family in dairy and selling of milk. Though no documentary proof as regards the income of the deceased was led on the record, yet being a Masonry labourer, his income must be more than a daily wage prevailing at the relevant point of time which was Rs.6,877/- per month and hence the Tribunal has rightly assessed income of the deceased as Rs.7,000/- per month.

7. So far as the argument of the learned counsel for the appellant-Insurance Company qua negligence on the part of the driver and his acquittal by the Court in the State case is concerned, merely because the driver of the offending vehicle has been acquitted in a criminal case cannot be a reason to hold that there was no negligence on his part or that the accident did not stand proved. In the case of **Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr. [(2020) 13 SCC 486]** it has been 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.”

8. 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.”

9. 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 judgement 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.”

10. 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”.*

11. In view of the above, I do not find any merit in the present appeal, which is accordingly dismissed. Pending applications, if any, also stand disposed off.

30.04.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO