

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.132

Case No. : FAO-5639-2023 (O&M)

Date of Decision : February 08, 2024

United India Insurance Co. Ltd. Appellant
vs.

Dhan Devi and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr.Maninder Arora, Advocate
for the appellant – Insurance Company.

* * *

GURBIR SINGH, J. :

1. Challenge in this appeal, filed by United India Insurance Company Limited (for short – Insurance Company), is to the Award dated 13.07.2023, passed by learned Motor Accident Claims Tribunal, Rewari (hereinafter referred to as – the Tribunal), whereby claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short – the Act), by respondents no.1 to 3 i.e. widow and minor sons of deceased Karan Singh Yadav (hereinafter referred to as – the claimants), seeking compensation on account of death of Karan Singh Yadav in motor vehicular accident, has been partly allowed and compensation amounting to Rs.55,20,768/- has been awarded to them along with interest @ 7.5% per annum from the date of institution of claim petition till its realization.

2. The facts in brief, which are necessary for proper adjudication of the present appeal, are that on 13.03.2021, Karan Singh (since deceased) along with his wife Dhan Devi was going towards their fields on his

motorcycle bearing registration No.HR-35-F-0142 at moderate speed on correct side of the road. At about 10:30 AM, when they reached near PNB (Jantra College Dadri), Charkhi Dadri, a truck/traulla bearing registration No.HR-61-B-8489 (hereinafter referred to as – the offending vehicle), being driven by Deepak Kumar – respondent no.4 in a rash and negligent manner, came on the wrong side of the road at a very high speed and hit the motorcycle of the deceased. As a result, Karan Singh Yadav and his wife fell on the road and he sustained multiple injuries. Karan Singh Yadav succumbed to the injuries. FIR No.50, under Sections 279, 304-A IPC was registered at Police Station Dadri City, Charkhi Dadri on the same day i.e. 13.03.2021.

3. The claimants, being legal heirs of the deceased, filed claim petition under Section 166 of the Act, submitting therein that Karan Singh Yadav was running a Biscuit Bakery and was earning Rs.1,00,000/- per month. Since all the claimants were fully dependent upon his income, they suffered loss of their livelihood. It was further pleaded that Rs.5,00,000/- was spent on the treatment, medicines, transportation and last rites of the deceased. So, compensation of Rs.1,00,00,000/- was claimed from the appellant – Insurance Company as well as respondents no.4 and 5 being driver and owner respectively of the offending vehicle.

4. Respondents no.4 and 5 contested the claim petition and filed joint written statement, wherein besides taking various preliminary objections regarding maintainability, cause of action, estoppel etc., they denied the aforesaid accident having taken place as also involvement of offending vehicle. Rather, it was alleged that the FIR in question was lodged by the

claimants in collusion with local police. All other material averments were also denied by them.

5. The appellant Insurance Company, the insurer of the offending vehicle, filed separate written statement, wherein objections regarding cause of action, jurisdiction of the Tribunal, violation of terms and conditions of insurance policy, collusion between the claimants and driver of vehicle in question etc. were taken. The earning of deceased as well as amount of expenditure incurred on his treatment etc. were also denied.

6. From the pleadings of parties, vide order dated 05.01.2021, following issues were framed by the learned Tribunal :-

- “1. Whether the death of Karan Singh son of Kalu Ram occurred due to the injuries sustained by him in a motor vehicular accident on 13.03.2021 caused due to rash and negligent driving of of Truck bearing registration No.HR-61B-8489 by respondent no.1? OPP.*
- 2. If issue no.1 is proved, whether the claimants are entitled to compensation? If so, how much amount and from whom? OPP.*
- 3. Whether the driver of offending vehicle was not holding a valid and effective driving licence on the date of accident to drive the vehicle in question? If so its effect? OPR.*
- 4. Whether the petition is not maintainable in the present form? OPR.*
- 5. Whether the claimants have no cause of action to file the present petition? OPR.*
- 6. Whether the claimants are estopped by their own act and conduct from filing the present petition? OPR.*

7. *Whether the claimants have concealed the material facts from the Court? OPR.*

7A. *Whether this Tribunal lacks jurisdiction to decide the present claim petition? OPR (This additional issue was framed vide order dated 22.02.2023)*

8. *Relief.”*

7. In support of their case, claimant Dhan Devi herself stepped into the witness box as PW-1 and some official witnesses were also examined besides tendering the relevant documents in evidence and closed the evidence. Respondents no.4 and 5 also closed their evidence by tendering documents and appellant Insurance Company relied upon the copy of insurance policy issued by its office and closed the evidence.

8. After considering rival submissions made by both the parties, learned Tribunal, while relying upon the legal position laid down by Hon’ble Apex Court in **Sarla Verma and others vs. Delhi Transport Corporation and another** reported as **(2009) 6 SCC 121** and **National Insurance Company Limited vs. Pranay Sethi and others** reported as **2017 SCC Online SC 1270**, awarded compensation of Rs.55,20,768/- to the claimants, payable by appellant Insurance Company, driver and owner jointly and severally together, with costs and interest @ 7.5% per annum from the date of institution of claim petition till realization.

9. Feeling aggrieved, the Insurance Company has preferred the present appeal by challenging the aforesaid Award mainly on the two following grounds :-

(i) it was the case of “hit and run” and offending vehicle has been involved afterwards; and

(ii) the income of the deceased has been assessed on higher side.

10. Learned counsel for the appellant has argued that FIR in question was registered on the statement of Ramesh Kumar – cousin of deceased Karan Singh Yadav. Number of the vehicle has not been mentioned in the FIR. Dhan Devi – widow of the deceased was pillion rider on the motorcycle, which was being driven by her husband Karan Singh Yadav (since deceased). She neither suffered any injury nor there is any explanation why FIR was not lodged by her. Reliance in support of contentions has been placed on Jeetu Ram vs. Surender (Punjab and Haryana) – Law Finder Doc Id # 1090728, Anguri Devi vs. Lakhvinder Singh alias Lakha (Punjab and Haryana) – Law Finder Doc Id # 875760 and Geeta Devi vs. Ravinder Kumar (Punjab and Haryana) – Law Finder Doc Id # 498336.

11. I have heard learned counsel for the appellant and also perused the case file.

12. After hearing the submissions of learned counsel for the appellant Insurance Company, it transpires that the accident in question took place around 10:30 AM on 13.03.2021. FIR was registered on the same day at 02:26 PM. Thus, there was prompt lodging of FIR and the same was lodged by none else but the cousin of the deceased. Dhan Devi – widow of the deceased stepped into the witness-box as PW-1. She proved the accident, which was result of rash and negligent driving of the offending vehicle by respondent no.4. The claimants also examined ASI Ashok Kumar (PW-3), who *inter alia* proved copy of post-mortem report of the deceased, memo of CCTV footage etc. After completion of investigation, challan under Section 173 Cr.P.C. was presented against respondent no.4 – driver of the offending

vehicle. It is not necessary to examine each and every witness of the occurrence. The proceedings before the Tribunal are summary in nature and the facts are required to be proved on the basis of principles of preponderance of probability. The driver of the offending vehicle i.e. respondent no.4 did not step into the witness box to even deny the accident. This Court has observed in case **Bhagwani Devi vs. Krishan Kumar Saini and others** reported as **1986 Accidents Claims Journal 321** that if a driver of the offending vehicle does not come to the witness-box to depose regarding the accident, adverse inference can be drawn against him and if the driver keeps away from the witness-box without any sound reasons, it must indeed be construed as a telling circumstance against him. In case **Raju vs. Sukhwinder Singh and other** reported as **2006 (4) RCR (Civil) 82**, it is also held by this Court that if driver of the offending vehicle does not come forward to deny the negligence, then adverse inference would be drawn against the driver of the offending vehicle. Apart from this, in case **National Insurance Company Limited vs. Sanjay Kumar and others – 2011 Vol.II ACC 75**, it is held by this Court that when driver of the offending vehicle is facing criminal trial, prima facie it can be presumed that he was responsible for the accident in question. The authorities cited by learned counsel for the appellant are of no help to the appellant.

13. Learned counsel for the appellant Insurance Company has argued that the claimants examined Pradeep Kumar, Senior Tax Assistant as PW-2, who proved the income tax returns filed by deceased Karan Singh Yadav as Ex.PW-2/2 to Ex.PW-2/6. It is argued that income of the deceased has been taken as Rs.3,71,060/-, as per income tax return for Assessment Year 2020-

21 (Ex.PW-2/6). The deceased was also having income from other sources which was fixed income of Rs.34,520/- and the same was required to be deducted from the amount of income assessed by learned Tribunal. He has further submitted that the deceased was running a factory along with his brother. So, the family is having income from the said factory. Therefore, the amount of compensation awarded to the claimants is on higher side.

14. As per income tax return for Assessment Year 2020-21 (Ex.PW-2/6), net salary of deceased is shown to be Rs.3,86,540/- and after making standard deduction and deduction of Rs.50,000/-, income from salary for the purpose of income tax was calculated as Rs.3,36,540/-. A sum of Rs.34,520/- was added as income from other sources. Thus, total gross income for the purpose of taxation is shown to be as Rs.3,71,060/-. Thus, income of deceased from salary was Rs.3,86,540/- for that year. The deductions from his salary were only for the purpose of granting benefit in taxation and not otherwise. So, income of the deceased was Rs.3,86,540/- whereas the Court has taken his income to be Rs.3,71,060/-, which is on the lower side. This argument of learned counsel that income is taken on higher side has no force as the learned Tribunal has granted compensation as under :-

<u>Sr.No.</u>	<u>Head of compensation</u>	<u>Amount</u>
01.	Loss of dependency	Rs.54,50,678.00
02.	Loss of estate	Rs.15,000.00
03.	Loss of consortium	Rs.40,000.00
04.	Funeral expenses	Rs.15,000.00
	<u>TOTAL</u>	<u>Rs.55,20,768.00</u>

15. In view of the above, this Court is of the view that the learned Tribunal, after giving careful consideration to each and every argument advanced before it, has passed a well-reasoned speaking Award, which needs no interference at the hands of this Court. No other infirmity has been pointed out in the impugned Award. Therefore, I do not find any merit in the present appeal, which is accordingly dismissed in limine.

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

February 08, 2024
monika

(GURBIR SINGH)
JUDGE

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