



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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FAO-2712-2007 (O&M)

Date of Decision: January 30, 2025

New India Assurance Co. Ltd., Alwar

.....Appellant(s)

Vs.

Smt. Birmati and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Raj Kumar Bashamboo, Advocate
for the appellant(s).

None for the respondents.

SUDEEPTI SHARMA J. (ORAL)

The present appeal has been filed by the appellant-Insurance company against the Award dated 19.03.2007 passed in the claim petition under Section 166 of the Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal'), wherein the appellant-Insurance company was fastened with the liability to pay the compensation to the claimants to the tune of Rs.5,85,000/- along with interest @ 7.5 % per annum.

BRIEF FACTS OF THE CASE

2. The brief facts of the case as mentioned in the claim petition are that on 30.4.2004, at about 7:30 pm, Umed Singh (since deceased) are going to his village Bahu Jamalpur on scooter bearing Registration No. HR-208-4148 and when he reached near Nikhar Soap Factory on the main road, a truck bearing Registration No. RJ-02G-3906, being driven by its driver i.e. respondent No.2 rashly, negligently and at a very high speed, came from



Rohtak side and its left front portion straight way struck against the scooter of the deceased. Due to the impact of the accident, Umed Singh fell down alongwith the scooter and sustained multiple grievous injuries and the scooter also badly damaged. With regard to this accident, FIR No. 182 dated 30.4.2004, under Sections 279/304-A IPC, was registered against the driver, respondent No. 2, in Police Station Sadar, Rohtak on the statement of Azad Singh son of Munshi Ram resident of Bahu Jamalpur.

3. Upon notice of the claim petition, appellant-Insurance Company and owner appeared and contested the claim petition denying the factum of compensation/accident

4. From the pleadings of the parties, the Tribunal framed the following issues:-

(1) Whether the accident took place on 30.4.2004 due to rash and negligent driving of truck bearing registration No. RJ-02G/3906 by respondent No.2 Mohamad Zakir as alleged by petitioners resulting into death of Umed Singh son of Kanshi Ram, as alleged ?OPP

(2) If issue No.1 is proved whether claimants are entitled for compensation, if so, to what amount and from whom? OPP

(3) Whether respondent No.2 Mohamad Zakhir driver of truck bearing Registration No. RJ-02G/3906 was not having a valid driving licence and the truck in question was being driven in violation of terms and conditions of the Insurance Policy at the time of accident? OPR-3

(4) Whether the petition is bad for non-joinder and mis-joinder of necessary parties OPR-3.



(5) Whether this court has no jurisdiction to entertain the present petition? OPR-3.

(6) Relief

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. However, the liability to pay compensation was fastened upon the appellant-Insurance Company.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellant-Insurance Company contends that since the respondent who was on scooter entered the road from the *Kachha* portion, therefore there was a contributory negligence on the part of the deceased-Umed Singh.

7. I have heard learned counsel for the appellant and perused the whole record of the case.

8. The relevant portion of the award is reproduced as under:-

“Issue No.1

8. In order to prove this issue, petitioner has examined PW2 Azad Singh. This witness has fully supported the case of the petitioner. On his statement, FIR Ex.P5 was recorded. PW3 Prem Sehgal, Record Keeper has stated that the challan has been filed against Mohammad Zakhir i.e. respondent No. 2 and he having been declared as proclaimed offender, file has been consigned. On the other hand, no evidence has been led. The insurance company has obtained dasti summons of the driver but he could not be served as he was away to Haz. Counsel that for the Insurance Company has also submitted that the scooter having entered the road from the side i.e. from Katcha portion, it should be presumed that he suddenly



came on the road and accident occurred due to his fruit. I have considered the argument of the parties and I find that only on the basis of the supposition, the cases cannot be decided. There is positive evidence of Azad Singh PW2 and Sham Lal PW4 that the accident occurred due to rash and negligent driving of truck bearing Regn. No. RJ-02G/3906 by respondent No.2. The issue, as such, is decided in favour of the petitioners. ”

9. A perusal of the award shows that award reveals that the Learned Tribunal has appropriately appreciated the evidence and arrived at a well-reasoned conclusion. The FIR No.182 dated 30.04.2004 under Sections 279/304-A IPC explicitly attributes the cause of the accident to the rash and negligent driving of the offending vehicle by respondent No. 2. The testimonies of PW2 Azad Singh and PW4 Sham Lal further reinforce this conclusion, as both witnesses have unequivocally deposed that the accident resulted from the reckless conduct of the driver of truck bearing registration No. RJ-026/3906. Notably, their testimonies remain unchallenged and unimpeached, thereby inspiring the confidence of this Court.

10. Furthermore, PW3 Prem Sehgal, the record keeper, has affirmed that a challan was filed against respondent No. 2, who has subsequently been declared a proclaimed offender. The filing of a challan indicates that, upon investigation, sufficient evidence was found to prosecute respondent No. 2, thereby reinforcing the allegations of negligence. The declaration of respondent No. 2 as a proclaimed offender under Section 82 of the Code of Criminal Procedure further underscores his attempt to evade the legal process, which can be construed as indicative of a guilty conscience.



11. Further, it is a settled law that the strict principle of proof in a criminal case are not attracted in motor accident claim petition. The claimants are required to establish their case on the touchstone of preponderance of probability as held by Hon'ble the Apex Court in judgment titled as ***Parmeshwari Vs. Amir Chand and others, 2011 (11) SCC 635***. The relevant extract of the same is reproduced as under:-

"12. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in Bimla Devi and others v. Himachal Road Transport Corporation and others, 2009(3) RCR (Civil) 805: 2009(4) R.A.J. 408: 2009(2) AICJ 167: (2009)13 SCC 530 are very pertinent:

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

12. The arguments advanced by the insurance company, premised merely on conjecture and supposition, fail to rebut the overwhelming evidence on record. It is a fundamental principle that legal adjudication cannot rest on mere presumptions in the absence of cogent evidence to the contrary. In the



instant case, the insurance company has failed to discharge its burden of proof or produce any material evidence to contradict the findings of the Tribunal.

13. In view of the settled legal position and the unimpeachable evidence on record, I find no perversity or legal infirmity in the award dated 19.03.2007 passed by the Learned Tribunal. The findings of the learned tribunal are based on sound legal reasoning and a proper appreciation of evidence. Consequently, the award is affirmed, and the petition stands *dismissed*.

14. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Raj Kumar Bashamboo, Advocate within a period of 20 days from the date of receipt of copy of this judgment.

15. All the pending applications also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

January 30, 2025
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Whether speaking/reasoned:	Speaking
Whether reportable	Yes / No