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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2303-2018 (O&M)
Date of Decision : 04.08.2025

Universal Sompo General Insurance Company Ltd ....Appellant

VERSUS

Mohni and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Pradeep Kumar, Advocate for the appellant.

Respondent Nos.1 to 3 proceeded against *ex parte* vide order dated 11.03.2019.

Respondent Nos.4 and 5 deleted from the array of respondents vide order dated 23.08.2018.

<u>ALKA SARIN, J.</u> (Oral)

1. Present appeal has been filed by the Insurance Company aggrieved by the award dated 08.02.2018 passed by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'Tribunal').

2. The brief facts relevant to the present *lis* are that on 31.12.2016, Anil Kumar (hereinafter referred to as the 'deceased') was going from Delhi to Ambala while driving his canter bearing registration No.UP-16DT-9851. He was driving the vehicle at a moderate speed and on the left hand side of the road. At about 05.45 am when he reached near the turn of village Partapgarh in the area of Police Station Sadar Thanesar, the container bearing registration No.HR-38S-9297 (hereinafter referred to as the

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'offending vehicle') was parked by its driver i.e. respondent No.4 herein in the middle of the road without giving any indicator or reflector in a dangerous manner. It was further alleged that the Canter being driven by the deceased struck against the offending vehicle due to which the deceased received multiple, serious and grievous injuries and succumbed to his injuries on the spot. It was further alleged that an Innova Car bearing registration No.DL-6CJ-9066 also struck against the canter of the deceased from behind. In this regard, a criminal case was registered against the driver of the offending vehicle.

3. On notice the driver and owner of the offending vehicle filed their separate written statements denying the factum of the accident and that the offending vehicle was insured with the Insurance Company i.e. the appellant herein.

4. The Insurance Company also filed its separate written statement raising various preliminary objection qua mis-joinder and non-joinder of parties, locus standi, etc. It was further averred that it was a case of contributory negligence and there was an unexplained delay in lodging the FIR and that the driver of the offending vehicle was not holding a valid and effective driving licence.

5. On the basis of pleadings of the parties, the following issues were framed :

1. Whether the accident resulting into death of Anil Kumar took place due to rash and negligent driving of

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respondent No.1, while driving truck/container bearing registration No.HR-38S-9297 ? OPP

2. If issue no.1 is proved to what amount of compensation and from whom the claimants are entitled to ? OPP

3. Whether there was violation of the terms and conditions of the insurance policy and respondent No.3 is not liable to pay any compensation ? OPR-3

4. Relief.

6. Vide the impugned award the following compensation was awarded holding the driver and owner of the offending vehicle and the Insurance Company jointly and severally liable :

Sr. No.	Head	Compensation awarded
1.	Monthly income	₹15,680/-
2.	Annual income	[₹15,680 x 12] = ₹1,88,160/-
3.	40% future prospects	[₹1,88,160 + 75,264] = ₹2,63,424/-
4.	Deduction – 1/3rd	[₹2,63,400 – 87,800] = ₹1,75,600/-
5.	Multiplier – 17	[₹1,75,600 x 17] = ₹29,85,200/-
6.	Loss of estate	₹15,000/-
7.	Loss of consortium	₹40,000/-
8.	Funeral expenses	₹15,000/-
	Total Compensation	**₹30,55,200/-**
	Interest	**7.5% per annum**

7. Aggrieved by the same, the present appeal has been preferred by the Insurance Company.

8. The learned counsel for the appellant-Insurance Company would contend that it was a case of contributory negligence and that the finding of the Tribunal on issue No.1 is erroneous. Learned counsel would further contend that the claim petition ought to have been dismissed

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inasmuch as the negligence of the deceased itself contributed to the happening of the accident as the deceased while driving the Canter hit the stationed vehicle, which was parked on the road. Learned counsel would further contend that the Tribunal has erred in assessing the income of the deceased as per the DC rates which ought to have been assessed as per the Minimum Wages Act, 1948.

9. Heard.

10. In the present case, in order to prove the negligence of the offending vehicle by its driver, the claimants examined the eye-witness, namely, Raj Kumar as PW-2, who submitted his affidavit as Ex.PW2/A wherein this witness had deposed that on 31.12.2016 he was going to Shahabad for his personal work while driving on a motorcycle bearing registration No. HR-07T-6009 and when he reached on the turn of village Partapgarh at about 05.45 am the offending vehicle was dangerously parked by its driver on the middle of the road sans there being any indicator/ reflector/parking lights. This witness further deposed that a Canter bearing registration No.UP-16-DT-9851 was going ahead of him at a normal speed and in order to avoid an accident its driver applied the brakes, but the Canter struck against the rear portion of the offending vehicle due to which the deceased sustained multiple serious injuries and died at the spot. This witness also proved on record copy of the FIR as Ex.P1, copy of report under Section 173 CrPC as Ex.P2, copy of charge-sheet as Ex.P5, and copy of his statement recorded before the Police as Ex.P9. This evidence remained uncontroverted on record. PW2 was cross-examined at length by

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the Insurance Company i.e. appellant herein but nothing could be elicited to falsify his statement and the above documents. Even the driver of the offending vehicle did not step into the witness-box to falsify the version of the claimants as regards parking of the offending vehicle in the middle of the road. There is nothing on record to conclude that it was a case of contributory negligence or that the deceased contributed in any manner to happening of the accident. Neither any issue in this regard was framed before the Tribunal nor any evidence was led by the Insurance Company. Hon'ble Supreme Court in the case of **Shanthi Nanaiah & Ors. vs. Oriental Insurance Company Ltd. & Anr. [SLP (Civil) Nos.3991-3992 of 2019 decided on 07.02.2024 = Law Finder Doc Id # 2580341],** held as under:

> *"6. Thus, in essence, the issue has crystallized as to whether the finding of contributory negligence on the part of the driver of the jeep in which the deceased was traveling is sustainable or not.*
>
> *7. Having considered the matter, in the facts of the case, where it is not in dispute that the lorry was standing in the middle of the road on which it was not supposed to be stationed at midnight and the jeep in question came from behind hitting the same, resulting in the death of the deceased, we do not find that the driver of the said jeep could have been in any way held to be responsible, either fully or partially so as to come under the definition of being liable for contributory negligence*

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in matters where claim is filed seeking compensation for injury or death resulting from such accident. 8. Learned counsel appearing for the appellants placed reliance on the decision of this Court in Archit Saini and Another vs. Oriental Insurance Company Limited & Ors.1, the relevant paras being extracted hereinbelow :

> *"7. In the present appeals, the moot question is whether the High Court committed manifest error in reversing the well considered decision of the Tribunal on issue No.1 answered against the respondents, instead concluding that it was a case of 50% contributory negligence on the part of the deceased driver of the Maruti Car.*
>
> *8. After having perused the evidence of PW-7, Site Map (Ext.P-45) and the detailed analysis undertaken by the Tribunal, we have no hesitation in taking the view that the approach of the High Court in reversing the conclusion arrived at by the Tribunal on issue No.1 has been very casual, if not cryptic and perverse. Indeed, the appeal before the High Court is required to be decided on fact and law. That, however, would not permit the High Court to casually overturn the finding of fact recorded by the Tribunal. As is evident from the*

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analysis done by the Tribunal, it is a well considered 1 2018 (3) SCC 365 opinion and a plausible view. The High Court has not adverted to any specific reason as to why the view taken by the Tribunal was incorrect or not supported by the evidence on record. It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubts. The Tribunal applied the correct test in the analysis of the evidence before it. Notably, the High Court has not doubted the evidence of PW-7 as being unreliable nor has it discarded his version that the driver of the Maruti Car could not spot the parked Gas Tanker due to the flash lights of the oncoming traffic from the front side. Further, the Tribunal also adverted to the legal presumption against the driver of the Gas Tanker of having parked his vehicle in a negligent manner in the middle of the road. The Site Plan (Ext.P-45) reinforces the version of PW-7 that the Truck (Gas Tanker) was parked in the middle of the road but the High Court opined to the contrary without assigning any reason whatsoever. In our

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view, the Site Plan (Ext.P45) filed along with the charge-sheet does not support the finding recorded by the High Court that the Gas Tanker was not parked in the middle of the road. Notably, the High Court has also not doubted the claimant's plea that the Gas Tanker/ offending vehicle was parked without any indicator or parking lights. The fact that PW-7 who was standing on the opposite side of the road at a distance of about 70 feet, could see the Gas Tanker parked on the other side of the road does not discredit his version that the Maruti Car coming from the opposite side could not spot the Gas Tanker due to flash lights of the oncoming traffic from the front side. It is not in dispute that the road is a busy road. In the cross-examination, neither has any attempt been made to discredit the version of PW-7 nor has any suggestion been made that no vehicle with flash lights on was coming from the opposite direction of the parked Gas Tanker at the relevant time.

9. Suffice it to observe that the approach of the High Court in reversing the well considered finding recorded by the Tribunal on the material

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fact, which was supported by the evidence on record, cannot be countenanced.

10. Accordingly, we have no hesitation in setting aside the said finding of the High Court. As a result, the appellants would be entitled to the enhanced compensation as determined by the High Court in its entirety without any deduction towards contributory negligence. In other words, we restore the finding of the Tribunal rendered on issue No.1 against the respondents and hold that respondent no.1 negligently parked the Gas Tanker/offending vehicle in the middle of the road without any indicator or parking lights."

9. Learned counsel for the Oriental Insurance Company Limited who was the insurer of the jeep in question submits that the liability was on the lorry which was static and thus no recovery is liable to be made from them and 50% has rightly been saddled on the owner and driver of the lorry. However, he submits that at least, the Insurance Company may be given the right to recover it from the lorry owner because it was 100% due to the negligence of the lorry which was lying idle on a moving road in the middle.

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10. Having given our anxious thoughts, we find that the matter needs interference.

11. The Court having arrived at the conclusion that there was contributory negligence on the part of the driver of the jeep in question does not seem to be proper and is, accordingly, set aside."

11. In view of the above, there is no error in the findings of Tribunal on issue No.1 hence, the argument of learned counsel for the appellant-Insurance Company in this regard is rejected.

12. The argument of the learned counsel for the Insurance Company that the income ought to have been assessed as per the Minimum Wages Act, 1948 and not as per the DC rates also deserves to be rejected. In the present case the deceased has left behind his widow, who was 20 years of age at the time of accident, besides his parents. The compensation cannot in any manner compensate for the loss suffered by the family of the deceased but it should at least be sufficient to mitigate the financial difficulties the family is likely to face. Hon'ble Supreme Court in the case of **Saroj and Ors. vs. IFFCO-TOKIO General Insurance Co. and Ors. [2024 (4) RCR (Civil) 881]** has upheld the application of DC rates with the following observations :

"9.3 The question before the High Court was not as to which yardstick to use to determine the notional income of the deceased was 'better'. Since there is nothing on record to establish that the rates notified by the District

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> *Commissioner, Rohtak, would not apply to the deceased, we find no reason to interfere with the finding of the Tribunal. Further, the testimonies of PWs 2, 5 and 6 show that he is an agriculturist who owned his own tractor and a JCB machine."*

13. Accordingly, the argument of the learned counsel for the Insurance Company that the income ought to have been assessed as per the Minimum Wages Act, 1948 stands rejected.

14. In view of the above, there is no merit in the present appeal and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

04.08.2025
jk

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

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