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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1786-2020 (O&M)
Date of Decision : 17.11.2025

National Insurance Co Ltd ... Appellant

Versus

Santosh and Others ... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep Suri, Advocate for the appellant.

Mr. Sumit Sangwan, Advocate for respondent Nos.1 to 3.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the Insurance Company aggrieved by the award dated 20.08.2019 passed by the Motor Accident Claims Tribunal, Charkhi Dadri (hereinafter referred to as the 'Tribunal').

2. The brief facts relevant to the present lis are that on 25.01.2017 at about 8:30 am, Ramesh Kumar (hereinafter referred to as the 'deceased') was going for his job to village Dagar on his motorcycle bearing registration No.HR-19-A-0636. When he reached on Barsana turn, a truck bearing registration No.HR-63-C-7453 (hereinafter referred to as the 'offending vehicle'), which was being driven by its driver, namely, Pawan Kumar (respondent No.5 herein) in a rash and negligent manner and at a very high speed, came from Badhra side and hit the motorcycle of the deceased as a result of which the deceased fell down and sustained multiple and grievous injuries. He was taken to General Hospital, Dadri but he succumbed to his

injuries on the way. After causing the accident, the truck driver fled away after leaving the offending vehicle at the spot. FIR No.31 dated 25.01.2017 under Sections 279 and 304-A IPC was registered with Police Station Sadar Dadri against the driver of the offending vehicle. On notice, the driver and owner of the offending vehicle i.e. respondent Nos.5 and 6 herein, filed their joint written statement raising some preliminary objections qua maintainability of the claim petition and concealment of material facts. On merits, it was averred in the written statement that no accident took place due to rash and negligent driving of the offending vehicle by its driver. It was further averred that the contents of the FIR were false and frivolous and that the same has been registered in collusion with police and no such accident took place with the offending vehicle. It was further stated that the offending vehicle was duly insured with the National Insurance Company Ltd. The appellant-Insurance Company also filed its separate written statement raising various preliminary objections regarding maintainability of the claim petition, estoppel, *locus standi*, cause of action, non-joinder of necessary parties and that the driver of the offending vehicle was not holding a valid and effective driving license.

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

1. Whether the accident in question took place on 25.01.2017, at about 8:30 a. m., due to rash and negligent driving of vehicle bearing registration No.HR-63-C-7453 being rash and negligent act of respondent No.1, causing death of Ramesh Kumar son of Banwari Lal ? OPP
2. If issue No.1 is proved, whether the petitioners are entitled to compensation, if so what amount from whom ? OPP

3. Whether the petition is not maintainable in the present form ? OPR

4. Whether the petition is bad for non-joinder of necessary parties ? OPR

5. Whether the petitioners have neither any locus standi and nor any cause of action accrued to her for filing and maintaining this petition ? OPR

6. Relief.

4. The Tribunal held the driver to be negligent while driving the offending vehicle and awarded the following compensation :

Sr. No.	Heads	Compensation Awarded	
1	Monthly Income	₹8,000/-	
2	Future Prospects - 25%	₹10,000/-	[₹8,000 + ₹2,000]
3	Deduction - 1/4th	₹7,500/-	[₹10,000 - ₹2,500]
4	Annual Income	₹90,000/-	[₹7,500 x 12]
5	Multiplier - 14	₹12,60,000/-	[₹90,000 x 14]
6	Loss of estate	₹15,000/-	
7	Funeral expenses	₹15,000/-	
8	Loss of consortium	₹40,000/-	
	Total Compensation	**₹13,30,000/-**	
	Interest	**9%**	

5. The Insurance Company has filed the present appeal aggrieved by the award. It has been argued by learned counsel for the appellant-Insurance Company that no eye-witness has been examined in the present case hence the Tribunal has erred in allowing the claim petition filed by the claimants. It is further the contention that the age of the deceased has been assessed on the basis of the postmortem report, however, as per Aadhaar Card (Mark 'A'), the age of the deceased was 52 years. Learned counsel for the appellant-Insurance Company has further contended that if the age of the

deceased is taken to be 52 years, a multiplier of '11' would have to be applied and an addition of 10% would have to be made towards loss of future prospects instead of 25%. Learned counsel for the appellant-Insurance Company has also contended that deduction has wrongly been assessed as 1/4th as major children have also been treated as dependents.

6. *Per contra* learned counsel for respondent Nos.1 to 3 has contended that it is not necessary that there would be an eye-witness in such type of motor vehicle accident cases and due to that reason the award passed by the Tribunal cannot be faulted with. In support of his contention he has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr. [2020 (13) SCC 486]** and **Anita Sharma & Ors. vs. The New India Assurance Co. Ltd. & Anr. [2021 (1) RCR (Civil) 200]**. In the present case the Tribunal has relied upon copy of the Crime Detail Form/site plan (Mark 'H') and mechanical report (Mark 'I' and Mark 'J'). In the Crime Detail Form/site plan (Mark 'H') it has been shown that the offending vehicle was on the wrong side of the road. Learned counsel for respondent Nos.1 to 3 has further contended that the age of the deceased has rightly been assessed as 45 years on the basis of postmortem report and also in the absence of any evidence having been produced and proved in accordance with law qua the age of the deceased.

7. Heard.

8. In the present case, the argument of learned counsel for the appellant-Insurance Company that no eye-witness has been examined hence the claim petition ought to have been dismissed, deserves to be rejected. Hon'ble Supreme Court in the case of **Sunita** (supra) has 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."

9. Further, Hon'ble Supreme Court in the case of **Anita Sharma** (supra) has held as under :

> " 22. Equally, we are concerned over the failure of the *High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's*

version is more likely than not true. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646. wherein this Court reiterated that:

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101])"

(emphasis supplied)

23. The observation of the High Court that the author of the FIR (as per its judgment, the owner-cum-driver) had not been examined as a witness, and hence adverse inference ought to be drawn against the appellant-claimants, is wholly misconceived and misdirected. Not only is the owner-cum-driver not the author of the FIR, but instead he is one of the contesting respondents in the Claim Petition who, along with insurance company, is an interested party with a pecuniary stake in the result of the case. If the owner-cum-driver of the car were setting up a defence plea that the accident was a result of not his but the truck driver's carelessness or rashness, then the onus

> *was on him to step into the witness box and explain as to how the accident had taken place. The fact that Sanjeev Kapoor chose not to depose in support of what he has pleaded in his written statement, further suggests that he was himself at fault. The High Court, therefore, ought not* to have shifted the burden of proof."

10. The Tribunal while deciding a claim petition is to decide the same on the touchstone of probabilities. In the present case, copy of the Crime Detail Form/site plan (Mark 'H'), mechanical reports (Mark 'I' and Mark 'J'), clearly reveal that the accident took place because of the offending vehicle being driven on the wrong side of the road. Learned counsel for the appellant-Insurance Company has not been able to dispute these documents. Rather, on a query by the Court, learned counsel for the appellant-Insurance Company has candidly admitted that the said documents are not disputed by the appellant-Insurance Company. In view thereof, the argument of learned counsel for the appellant-Insurance Company that the claim petition should have dismissed since the eye-witness was not examined, cannot be accepted. There is other evidence which clearly shows that the offending vehicle was being driven on the wrong side of the road and hence the driver of the offending vehicle was rightly held to be negligent. Further still, the driver of the offending vehicle did not step into the witness-box to contradict the said fact.

11. The argument of learned counsel for the appellant-Insurance Company that the age of the deceased ought to have been assessed as per his Aadhaar card, deserves to be rejected. In the absence of any cogent evidence having been produced, the Tribunal has rightly relied upon the postmortem

report which reveals the age of the deceased as 45 years. Accordingly, the age of the deceased as assessed by the Tribunal as 45 years is maintained. Since the age of the deceased is upheld as assessed by the Tribunal, there is no modification in the multiplier or the future prospects.

12. The argument of learned counsel for the appellant-Insurance Company that deduction has wrongly been assessed as 1/4th as major children of the deceased have also been treated as dependents, deserves to be rejected. Admittedly, both the children of the deceased were stated to be 21 years of age at the time of accident and were residing with the deceased. There is nothing on record to conclude that they were fully independent and were not dependent upon their deceased father. Hon'ble Supreme Court in the case of **Seema Rani & Ors. Vs. The Oriental Insurance Company Limited & Ors. [2025 (2) RCR (Civil) 48]** has held as under :

> "*9. We have heard the learned counsel for the Appellants. We are unable to agree with the view taken by the Tribunal on the dependents of the deceased. This Court in National Insurance Company Limited v. Birender & Ors., (2020) 11 SCC 356 had expounded that major married and earning sons of the deceased, being legal representatives, have a right to apply for compensation, and the Tribunal must consider the application, irrespective of whether the representatives are fully dependent on the deceased or not. The Court went on to conclude that since the sons, in that case, were earning merely Rs. 1,50,000/- per annum, they were largely dependent on the earnings of the deceased and were staying with her.*"

13. In view of the law laid down by the Hon'ble Supreme Court in the case of **Seema Rani** (supra), the deduction of $1/4^{th}$ has rightly been applied by the Tribunal.

14. In view of the above, present appeal being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.11.2025 **(ALKA SARIN)**
jk **JUDGE**

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