

(2018) 07 P&H CK 0313

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 5225 Of 2013, 4246 Of 2016

Reliance General Insurance Company Limited

APPELLANT

Vs

Shiksha And Others

RESPONDENT

Date of Decision : 06-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A Motor Vehicles Act, 1988 — Section 166

Citation : (2018) 07 P&H CK 0313

Hon'ble Judges : Rekha Mittal, J

Bench : Single Bench

Advocate : Vandana Malhotra, Balram Prashar, J.S.Ghuman

Final Decision : Dismissed

Judgement

Rekha Mittal, J

CM No. 22155-CII of 2013 in FAO No. 5225 of 2013

Prayer in this application is for condoning delay of 92 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 92 days in filing

the appeal stands condoned. Disposed of accordingly.

Main case

This order will dispose of FAO No. 5225 of 2013 and 4246 of 2016 as these have emerged out of the same award dated 20.4.2013 passed by the

Motor Accidents Claims Tribunal, Gurgaon (in short "the Tribunal") whereby compensation has been awarded on account of death of Pawan

Kumar in a motor vehicular accident that took place on 31.12.2011.

FAO No. 5225 of 2013 has been filed by the Reliance General Insurance Company Limited (hereinafter to be referred to as "the insurance

companyâ??) whereas FAO No. 4246 of 2016 has been preferred by one of the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been preferred to assail findings of the Tribunal qua involvement of the vehicle in question in the occurrence as well as quantum of compensation assessed.

The facts relevant for disposal of present appeal are that as per case set up by the claimants-appellant, on 31.12.2011, Pawan Kumar was going to his

house on motor cycle bearing No. HR-26-AB-4240. When he reached ahead of Shani Mandir, offending tractor with trolley bearing No. HR-26-AS-

3852 driven rashly and negligently by respondent No. 1 before the Tribunal hit motor cycle of the deceased. Pawan Kumar sustained serious injuries

and died on 1.1.2012.

Respondent No. 1 before the Tribunal filed the written statement and denied the accident. It is averred that the tractor in question has been falsely

involved in the accident. All other material averments of the application have been denied with prayer for dismissal of the same.

Ugarsain, owner of the offending vehicle also filed reply and raised averments similar to the stand taken by driver of the offending vehicle.

The insurance company raised preliminary objections inter alia that driver of the offending vehicle was not holding a valid and effective driving licence

at the time of accident; the vehicle was being plied for commercial purpose whereas it was insured for agricultural purposes only. On merits, it has

denied the material averments and prayed for dismissal of the petition.

The controversy between the parties led to framing of following issues by the learned Tribunal:-

1. Whether the accident has been caused on 31.12.2012 at about 8.30 a.m. due to rash and negligent driving of respondent No. 1 while driving

offending vehicle bearing No. HR-26S-3852 and caused the death of Pawan Kumar as alleged? OPP

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

3. Whether the respondent No. 1 was holding a valid and effective driving licence at the time of accident?OPR

4. Whether the respondent has violated the terms and conditions of the insurance policy?OPR

5. Whether the insurer is liable to indemnify the insured? OPR
6. Whether the petition is not maintainable in the present form? OPR
7. Whether the petitioners have no cause of action to file the present petition? OPR
8. Whether the petition is bad for mis joinder of necessary parties, if so to what effect? OPR
9. Relief

To discharge onus of issue No. 1, the claimants examined Rakesh PW5, Satish Kumar Ahlmad PW2 and ASI Prithvi Pal PW3.

Having heard counsel for the parties in the light of materials on record, the learned Tribunal answered issues No. 1 and 2 in favour of the claimants

and resultantly held them entitled to compensation of Rs. 14,80,000/-, detailed in paras 15 to 17 of the award. Issues No. 3 to 8 were answered against

the party upon whom the onus thereof was placed.

FAO Nos. 5225 of 2013 and 4246 of 2016

Counsel for the insurance company would argue that testimony of Rakesh, alleged eye witness to the occurrence and author of FIR (Ex. P4) is not at

all sufficient to connect the vehicle in question and Vinod Kumar respondent No. 1 therein to be driver of the offending vehicle. It is argued with

vehemence that once Rakesh failed to establish that accident was the result of rash and negligent driving by Vinod Kumar, the mere fact that challan

was presented against Vinod Kumar or Vinod Kumar did not appear in the witness box to counter plea of the claimants and testimony of Rakesh is

not sufficient to accept story brought forth by the claimants qua the accident in question.

Counsel, in the alternative, would urge that in case findings of the Tribunal on issue No. 1 are affirmed, compensation awarded by the Tribunal is on

higher side and needs reduction. For this purpose, it is argued that claimants failed to adduce tangible evidence to prove income of the deceased at Rs.

10,000/- per month.

Counsel representing the claimant has supported findings of the Tribunal on issue No. 1 and so also entitlement of the claimant to get compensation. It

is argued that in addition to compensation assessed by the Tribunal, claimant is entitled to benefit of increase in income for future prospects and

adequate compensation under conventional heads.

I have heard counsel for the parties and perused the records. Rakesh, alleged eye witness to the occurrence and author of FIR No. 3 dated 1.1.2012

under Sections 279/304-A of the Indian Penal Code (Ex. P4) was examined to prove version of the claimants brought forth in para 25 of the claim

application. Perusal of the FIR would reveal that the same does not make reference to particulars of the offending vehicle much less giving its

registration number. It only makes reference to a tractor. Further it records that maker of statement made enquiries at his own level and found that

the tractor is of Vijay son of Kundan Lal resident of village Kherki Daula.

Pawan Kumar deceased is paternal uncle of Rakesh. He tendered into evidence his affidavit Ex. PW5/A by way of examination in chief. A relevant

extract therefrom reads as follows:-

â??On 31.12.2011, Pawan Kumar son of Sh. Heera Lal s/o Bhagat Ram of my village was just ahead from my Car No. HR-26-W- 2660, on his

motor cycle No. HR-26-AB-4240 being ridden (sic) by the deceased Pawan Kumar, at a moderate speed while going to his village being followed by

the deponent in his above car and the deponent witnessed the said accident which was caused due to rash and negligence of respondent No. 1 while

driving his tractor No. HR-26-AS-3852 and the FIR bearing No. 3 dated 1.1.2012 u/Ss 279, 304-A IPC has been lodged on the basis of my statement

by the police of Police Station Kherki Daula. The accident could be avoided in case the respondent No. 1 could driven (sic) his tractor at moderate

speed and this fact was also I have narrated before the father of the deceased Pawan.â??

In his cross examination, he has deposed that he had not mentioned number of the tractor in statement given to the police. He had seen tractor from

distance of 40-50 meters. He had seen Vijay, driver of the tractor. He knew Vijay for the last three/four years. He contacted villagers of Vijay and

they told him that tractor was of Vijay. Police had recorded his statement on 10.1.2012. The number of the tractor was told to him by the villagers. He

did not remember names of the villagers. Tractor is of village Kherki Daula and it is near to their village.

Perusal of the facts elicited in cross examination of Rakesh, noticed hereinbefore, leaves no manner of doubt that Rakesh did not know number of the

tractor when he got recorded his statement to the police on 1.1.2012, next day from the accident. He came to know of number of the tractor from the villagers but could not disclose the name(s) of the villagers who provided him information with regard to number of the tractor in question. As stated in cross examination, the tractor was driven by Vijay who was known to Rakesh for the past three/four years. On the contrary, the claimants have averred that the tractor was driven by Vinod and the same is owned by Ugarsain son of Parbhati Lal. The very fact that Rakesh did not know number of the tractor creates a doubt in his version that he is an eye witness to the occurrence. Had it been true that Rakesh was present at the spot, he would have certainly given description of the tractor in his statement i.e. FIR. I stand fortified in my observation from the fact that in the FIR, the time of occurrence is stated to be 8.30 p.m. but in the opening line of cross examination, Rakesh has deposed that his timings of job are from 9-00 to 10 p.m. On 31.12.2011, he was coming from his company to his house. It appears that Rakesh lodged the FIR and appeared before the Tribunal to support cause of the claimants as he happens to be a close relative of deceased Pawan Kumar. Once Rakesh did not know registration number of the offending vehicle and claimants failed to examine the villager(s) who disclosed particulars of the offending vehicle to Rakesh, I find merit in contention of the insurance company that testimony of Rakesh is not at all sufficient to connect the offending vehicle or to establish that accident is the result of rash and negligent driving of Vinod while driving the alleged offending tractor. Taking into consideration first version recorded in FIR (Ex. P4) that contains reference to Vijay resident of village Kherki Daula, contention of counsel for the claimant that name of Vijay has been recorded as a result of typographical error is not meritorious and cannot be accepted. This apart, Rakesh in his examination in chief has stated that accident was caused due to rashness and negligence of respondent No. 1. His statement to this effect is only an opinion expressed by him but he has failed to explain as to how driver of the offending vehicle was rash or/and negligent in his driving. He has further deposed that the accident could be avoided in case respondent No. 1 had driven his tractor at a moderate speed but nothing has been stated by him as to what was the speed of the tractor and what did he mean by moderate speed. Analyzed from any angle, testimony of Rakesh is not enough to prove that the accident was the result of rash and/or

negligent driving of the alleged offending vehicle.

The Tribunal, in para 10 of the award, has held that from the statement of PW5 coupled with the documentary evidence that respondent No.1 has

been challaned by the police regarding this accident, it is proved that accident had taken place due to rash and negligent driving of offending vehicle by

respondent No. 1. The Tribunal, for the reasons best known, did not advert to testimony of PW5 in detail particularly the facts elicited in his cross

examination, therefore, committed a gross error to say that testimony of PW5 alongwith factum of presentation of challan is sufficient to discharge

onus of issue No. 1. Presentation of challan against Vinod is one of the factors that can be taken into consideration but that itself is not sufficient to

prove rashness and negligence on the part of Vinod or involvement of the vehicle in question in the occurrence. Indeed, the claimants failed to prove

their case, therefore, non examination of Vinod can not enure to benefit of claimants to discharge their obligation in law. In this view of the matter, I

am of the considered opinion that claimants failed to establish their case that accident is the result of rash and negligent driving of the offending vehicle

by its driver which is a sine qua non for maintaining an application under Section 166 of the Motor Vehicles Act. 1988. That being so, findings of the

Tribunal on issue No. 1 cannot be allowed to sustain and accordingly set aside. Resultantly, issue No. 1 is answered against the claimants and in

favour of the respondents, therefore, the claimants are not entitled to get compensation.

For the foregoing reasons, the appeal filed by the insurance company is allowed. Award passed by the Tribunal is set aside. Application for

compensation filed by the claimants is dismissed. As a natural corollary, appeal preferred by the claimant seeking enhancement of compensation is

dismissed, leaving the parties to bear their own costs.