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**(2013) 10 P&H CK 0248**

**In the Punjab And Haryana At Chandigarh**

**Case No :** F.A.O. Nos. 4662 & 4663 of 2011 [O&M]

United India Insurance Company Ltd.

APPELLANT

Vs

Ram Pyari

RESPONDENT

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**Date of Decision :** 21-10-2013

**Acts Referred:**

**Citation :** (2014) 2 PLR 435

**Hon'ble Judges :** Vijender Singh Malik, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Vijender Singh Malik, J.—The above titled two appeals have been brought by United India Insurance Company Ltd. Though, the appeals are there against distinct awards, yet the accident is the same and, there fore, the two appeals are being disposed of by way of this judgment. On 26.03.2007, Ashwani Kumar and his friend Rakesh Kumar were coming back to their village from Mata Mansa Devi temple on a motorcycle bearing registration No. PB-11V-2724(T). It was driven by Rakesh Kumar. Vidhi Chand was following them on a scooter bearing registration No. HR-01-5765. When the motorcycle driven by Rakesh Kumar was near a petrol pump within the area of village Rampur, a Tata Sumo bearing registration No. PB-13J-9248 driven by respondent No. 1 came in a rash and negligent manner from the opposite side and had hit the motorcycle driven by Rakesh Kumar as a result of which both the riders of the motorcycle fell down, suffered injuries and died on account of the same. It is claimed that the said accident occurred due to rash and negligent driving of the Tata Sumo by respondent No. 1.

2. On the death of Ashwani Kumar, his parents Smt. Ram Pyari and Geeta Ram had brought claim petition No. 156 dated 1.6.2007 u/s 166 of the Motor Vehicles Act, 1988 [for short "the Act"] seeking compensation in a sum of Rs. 12 lakhs.

3. On the death of Rakesh Kumar, his parents Smt. Paramjit Kaur and Krishan

Chand brought claim petition No. 39T dated 1.6.2007 u/s 166 of the Act seeking compensation in a sum of Rs. 15 lakhs.

4. Deceased Ashwani Kumar is claimed to be employed as a driver with Luxmi Flour Mills at Rajpura Town and was drawing monthly salary of Rs. 8,000/-. He is claimed to have been 24 years of age at the time of his death.

5. On the other hand, Rakesh Kumar is claimed to have been working as a carpenter and was earning Rs. 8,000/- per month. He was also, a bachelor.

6. The claim petitions have been resisted by the respondents who have denied the very factum of accident. It is denied that the accident took place due to rash and negligent driving of Tata Sumo in question. The averments of the claimants regarding the age, occupation and income of the deceased have also been denied. The claimants are denied to deserve any amount as compensation. The claim petitions are prayed to be dismissed.

7. On the death of Aswani Kumar, learned Motor Accidents Claims Tribunal, Patiala vide award dated 29.3.2011 has assessed and awarded a sum of Rs. 4,46,500/- as compensation.

8. In the other case, on the death of Rakesh Kumar, learned Motor Accidents Claims Tribunal, Patiala vide award dated 29.3.2011 has assessed and awarded a sum of Rs. 4,46,500/- as compensation.

9. Learned counsel for the appellant has contended that the FIR, Ex. R1, is silent about the name of the driver and description of the offending vehicle. According to him, the name of the driver and number of the offending vehicle has been introduced later on in the statement of Anil Chouhan [PW-3] who is said to be a shop keeper in the village. According to him, it has been a case of head-on collision and for that reason also, it cannot be said to be a case of rash and negligent driving of Tata Sumo in question.

10. Learned counsel for the appellant has further contended that Anil Chouhan has stated that after seeing the accident, he went away. According to him, his conduct is paradoxical as he did not stop at the place of accident and had gone away. He has submitted that in these circumstances, the statement of Anil Chouhan cannot be relied upon.

11. Learned counsel for the appellant has further submitted that there is no documentary evidence regarding the income of the deceased taken at Rs. 8,000/- per month. According to him, at the most, it should have been taken as Rs. 5,000/- per month.

12. Learned counsel for the respondents have submitted, on the other hand, that the finding of learned Tribunal on the aspect of negligence is faultless. According to them, there is no reason for not believing Anil Chouhan who has stated about the number of the offending vehicle and the name of its driver. They have further submitted that deceased Ashwani Kumar had been a driver by profession and he

was getting Rs. 8,000/- per month as salary and learned Tribunal has not committed any error in accepting the said evidence. According to him, the other deceased, named, Rakesh Kumar had been a carpenter by profession and taking of his income at Rs. 8,000/- per month is also correct.

13. It is true that the FIR is silent about the name of the driver and description of the offending vehicle. However, the FIR in this case was registered on the statement of Vidhi Chand. If Vidhi Chand could not give the aforesaid particulars, it would not mean that no other person could have seen the accident. Anil Chouhan, who claims to have seen the accident was not related to the deceased. After seeing the accident, he may have some other important work at hand and he may have to leave the place. The only fact that he had left the spot after the accident would not lead to a conclusion that his conduct is paradoxical. There must be some reason to say that Anil Chouhan is a planted witness and that he could not have seen the accident.

14. Against the aforesaid statement of Anil Chouhan, no evidence has come from the other side. Even Naresh Kumar, the driver of the offending vehicle failed to step in the witness box to deny the very accident. Insurance company which is challenging the award has not taken pains to summon Naresh Kumar in the witness box and examine him on the point.

15. There is nothing on record to suggest that it has been a head on collision between the two vehicles. Even a head-on collision would not spell out contributory negligence in all circumstances. Head-on collision in the middle of the road would spell out contributory negligence on the part of drivers of both the vehicles. Had it been an accident on the correct side of the motorcycle, it would be a case of rash and negligent negligence of the driver of Tata Sumo even if it was a head-on collision.

16. In these circumstances, I do not find any ground to accept the submissions of learned counsel for the appellant on this question. Therefore, the finding of learned Tribunal on issue No. 1 is upheld.

17. One of the deceased, named, Ashwani Kumar was a driver by profession. He has been working with Luxmi Flour Mills as a driver. There is nothing to say that a driver working with a concern cannot be getting Rs. 8,000/- per month as salary. The discretion exercised by learned Tribunal in accepting his income at Rs. 8,000/- does not call for interference in the appeal. Similarly, a carpenter, as Rakesh Kumar has been, must also be earning more than an unskilled labourer. Even an unskilled labourer used to earn Rs. 4000/- to Rs. 5000/- per month. In the face of this fact, it can be said that Rakesh Kumar was also earning Rs. 8,000/- per month. No exception is taken to the aspect of calculation of the compensation and, therefore, I find no ground to interfere with the awards. Consequently, the appeals are found to have no merit and are dismissed.