

(2001) 3 RCR(Civil) 743

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO 2384 of 1997

Oriental Insurance  
Company

APPELLANT

Vs

Rachna

RESPONDENT

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**Date of Decision:** May 3, 2001**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 166, 171
- Penal Code, 1860 (IPC) - Section 279, 304

**Citation:** (2001) 3 RCR(Civil) 743**Hon'ble Judges:** R.L. Anand, J**Bench:** Single Bench**Advocate:** Mr. Vinod Chaudhri, for the Appellant; Mr. K.S. Dadwal, for the Respondent**Final Decision:** Partly Allowed

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**Judgement**

R.L. Anand, J.

Oriental Insurance Company through its Manager has filed the present appeal and it has been directed against the award dated 24.9.1997 passed by the Court of Motor Accident Claims Tribunal, Hoshiarpur, who allowed the claim petition filed by Smt Rachna, widow of Suresh Kumar, Miss Cannu Sharma, minor daughter of Suresh Kumar, Pankaj minor son of Suresh Kumar, Krishan Chand father of Suresh Kumar and Satya Rani mother of Suresh Kumar and awarded compensation to the tune of Rs. 3,69,500/- along with interest at the rate of 12% per annum from the date of filing of the claim petition till realisation and it was ordered by the Tribunal that claimant No. 1 will get Rs. 1,10,000/-, claimants 2 and 3 will get Rs. 1,10,000/- each and claimants 4 and 5 will get Rs. 39,500/- in equal shares. Also it was observed that the amount falling to the share of the minors shall be deposited in the bank which shall be paid to them on attaining their majority. Also it was observed that claimant No. 1 shall be entitled to receive interest from time to time on the amount which was given to her minor children.

2. The brief facts of the case are that 5 claimants mentioned above filed claim petition against Sukhjot Singh, Suresh Kumar and Oriental Insurance Company Ltd., Hoshiarpur and claimed Rs. 6 lacs by way of compensation on account of the death of Suresh Kumar son of Kishan Chand who was the husband of Rachna. It is alleged by the claimants that on 4.11.1995, a Maruti Van No. PL-2CC-6589 belonging to Sham Lal was being driven by Suresh Kumar while Tarsem Lal was sitting in the said van by the driver's side on the front seat. The other occupants of the van were Rajiv, Rimpi and Monica, who were on the back seat. At about 7-15 pm, when they reached in the area of petrol pump, Nasrala, a Matador No. GJ IV-2809 being driven by respondent No. 2 another Suresh Kumar came from behind very rashly and negligently and struck the side of Matador with the Maruti van. Due to the accident, the occupants of the van received injuries. Suresh Kumar succumbed to his injuries in the hospital. A case was registered against the driver vide FIR No. 263 dated 5.11.1995. The accident took place due to the rash and negligent driving of Matador by its driver respondent No. 2. Claimants were dependents on the income of the deceased who was driver by profession and was earning Rs. 3000/- per month. Respondent No. 1 was the owner of Matador which was insured with respondent No. 3. Thus, all the respondents are liable jointly and severally to pay compensation.

3. Notice of the claim petition was given to the respondents. They denied the allegations. It was admitted that Matador in question was owned by respondent No. 1-Sukhjot Singh. According to respondents 2 and 3-Suresh Kumar and the Insurance Company, this matador did not meet with any accident as alleged by the claimants and it was falsely involved in order to show the accident with the van.

4. Insurance Company-respondent No. 3 also contested the claim petition and it was pleaded by it that accident did not take place with the Matador and it was also pleaded in the alternative that if it is proved on record that the accident had taken place, it did not take place on account of the negligence of respondent No. 2-Suresh Kumar.

5. From the pleadings of the parties, the Tribunal framed following issues 1 to 4:-

" 1. Whether the accident took place due to rash and negligent driving of Vehicle No. GJ-IV-2809 by respondent No. 2, resulting in the death of Suresh Kumar ? OPA

2. To what amount and from whom, the claimants are entitled to compensation ? OPA

3. Whether the claim petition is bad for non-joinder of necessary parties? OPR 3

4. Relief"

6. In order to prove their case, the claimants in the trial Court examined Smt. Rachna Rani, PW1, Sham Lal, PW2, Tarsem Lal, PW3 and also tendered in evidence copy of the postmortem report Exhibit A1, copy of FIR Exhibit A3 and copy of death certificate Exhibit A3. In rebuttal, the respondents examined Shri H.S. Brar, DSP, RW1, Shri B.S. Sharma, RW2, Suresh Kumar, RW3 and also produced in evidence copy of the insurance policy

Exhibit R5. Copy of the licence was produced as Exhibit R4 and copies of the investigation reports Exhibits R1 to R3.

7. On the completion of the proceedings, the Tribunal decided issue No. 1 in favour of the claimants and against the respondents. Under issue No. 2, the Tribunal awarded a sum of Rs. 3,69,500/- to the claimants along with interest at the rate of 12% per annum from the date of filing of the petition till payment. Issue No. 3 was decided against the respondents as it was not pressed during the course of arguments before the trial Court. The claim petition was partly allowed. The appellant-Insurance Company feeling not satisfied with the award of the Tribunal has filed the present appeal.

8. I have heard the learned counsel for the parties and with their assistance I have gone through the record of the case.

9. Learned counsel for the appellants has attacked the finding of the trial Court on issues 1 and 2. Assailing the finding of the trial Court, it was argued by the learned counsel for the appellants that it has not been proved on the record that vehicle GJ-IV-2809 i.e. Matador was ever involved in the accident. In support of his contention, learned counsel for the appellants has relied upon report Exhibit R3 of a Private Detective Agency who gave its finding that Matador in question was never involved in the accident. Learned counsel for the appellants also relied upon the statement of Shri H.S. Brar, DSP who conducted the enquiry in this case and came to the conclusion that the offending vehicle was not involved in this case.

10. I do not subscribe to the arguments raised by the learned counsel for the appellants. RW1 Shri H.S. Brar, DSP deposed that enquiry was directed to him in connection with FIR 263 dated 5.11.1995 registered under Sections 279/304-A/337 Indian Penal Code of PS Sadar Hoshiarpur. He further stated that application was given to SSP in this connection and he submitted the report Exhibit R1 and on the basis of his report, the District Magistrate gave directions to withdraw case against respondent No. 2. It is well settled that the opinion of the investigating agency is not binding on the law Courts, which can always formulate an independent opinion about the culpability or otherwise of an accused. Similarly, no reliance can be placed on the statement of Shri B.S. Sharma for the reasons that he is on the pay roll of the insurance company and he is an interested witness. No reliance can be placed on the statement of Shri H.S. Brar, D.S.P. as he admitted in his cross- examination that he did not visit the spot in connection with the inquiry. He further admitted that owner of the vehicle was Sukhjit Singh. It is strange that this enquiry was not conducted at the instance of respondent No. 2 or the owner of the vehicle but at the instance of a stranger who had nothing to do with the ownership of Vehicle GJ-IV-2809. There was hardly any necessity on the part of Tarsem Lal, PW3 to involve this vehicle. Tarsem Lal, PW3 is not related with the family of the deceased and there was no occasion for him to coin out a false story for the benefit of the claimants. If any report is given by the Insurance Company at its own level, it can never go against the interest of the deceased because it is their own report. RW2 Shri B.S. Sharma has also

admitted in the cross-examination that he is on the pay rolls of the Company. Though he went to the spot but he did not record the statement of the owner of the petrol pump. There is no basis to come to the conclusion that Vehicle GJ-IV-2809 was not involved in this accident.

11. Learned counsel for the appellants then relied upon the statement of Suresh Kumar, RW3 who stated that no accident took place with Vehicle GJ-IV- 2809 nor he was the driver of the vehicle on that date. It appears that Suresh Kumar is telling a lie. It has come in the cross examination of Suresh Kumar that police had taken licence and vehicle in possession after the incident. When he was innocent, he should have made the application to the police for conducting investigation at a higher level. Truth has come out from the statement of respondent No. 2 when he admits that he knew respondent No. 1 who might be plying vans etc. as taxis. As against the statement of these witnesses, we have categorical statement of PW3-Tarsem Lal, who stated that on the date of accident, he was one of the occupants of Maruti van which was being driven by Suresh Kumar-deceased. He further stated that at about 7 p.m. near the petrol pump the accident had taken place when vehicle bearing No. GJ-IV-2809 came from behind and struck against the van. It has also come in the statement of Tarsem Lal that driver of the Matador was driving the vehicle at a very rash speed and he did not blow any horn. It has also come in the statement of this witness that he along with other occupants received injuries. He was taken to the hospital along with others and he remained admitted for 4 days. His statement was recorded by the police and on the basis of that FIR Exhibit A2 was registered. Categorically it has been deposed by Tarsem Lal that Suresh Kumar died on the next date of accident and that respondent No. 2 was negligent and rash at the time of the accident while driving Matador GJ-IV-2809. I have already stated above that Tarsem Lal is not related with the family of the deceased and he had no occasion to depose falsely. The very fact that Matador had struck against the van from behind, is prima facie proof of negligence. Thus, I affirm the findings of the Tribunal on issue No. 1.

12. It was submitted on behalf of the appellants that the Tribunal awarded the amount of compensation on the higher side. He submitted that there is no proof that the deceased was earning Rs. 3000/- per month.

13. On the contrary, the learned counsel for the respondents-claimants submitted that it has been proved on the record through the statement of PW2 that the deceased was earning Rs. 3000/- per month. Learned counsel for the respondents also drew my attention to the statement of Rachna Rani, PW1 who deposed that deceased was working as a Driver and was earning Rs. 3000/- per month and that he was contributing Rs. 2500/- towards household expenses. I partly accept the arguments of the learned counsel for the appellants as in my opinion there is no satisfactory evidence with regard to the income of the deceased. It is stated in the claim petition that the deceased was earning Rs. 3000/-per month. PW2 is the so called employer of the deceased. He has admitted in the cross examination that he was not maintaining any accounts. No receipt of the salary has been produced on record. Nevertheless, it has been established on

record that the deceased was a driver. He was a married person aged 28 years at the time of accident. He was maintaining his wife and two children besides parents. Deceased being an able-bodied person could easily earn Rs. 2500/- from doing the work of a driver. After calculating the monthly dependency of the claimants at Rs. 1800/- the annual dependency comes to Rs. 21,600/- and by applying the multiplier of 15 the amount comes to Rs. 3,24,000/- and after adding Rs. 10,000/- for funeral expenses etc. the total amount comes to Rs. 3,34,000/-. The claimants shall also be entitled to interest at the rate of 12% on this amount from the date of filing of the petition till payment.

14. It was then submitted by the learned counsel for the appellants that it is proved on record that the van was being used as a taxi and, therefore, the Insurance Company is not liable to pay any compensation. I am not in a position to subscribe to the argument of the learned counsel for the appellants. When Sham Lal appeared as PW2, not an iota of suggestion was put to this witness that he was running Matador as a taxi. In the absence of any cogent evidence, I am not inclined to accept this contention of the learned counsel for the appellants.

15. It was then submitted by the learned counsel for the appellants that interest may be granted to the respondents at the rate of 9% only. In support of his contention, he relied upon the judgement of Hon"ble Supreme Court in S. Kaushnuma Begum and others v. The New India Assurance Co. Ltd. and others AIR 2000 SC 85. I have gone through the cited judgment and in my opinion this judgement is distinguishable on facts. The Supreme Court has not laid down any law that in all cases interest cannot exceed 9%. Section 171 of the Motor Vehicles Act specifies that the Tribunal has the power to grant simple interest at such rate and from such date not earlier than the date of making the claim, as may be specified in this behalf. We have to see the reasonableness. The rate of interest of 12% cannot be held to be unreasonable or wrong.

16. Thus, I partly allow this appeal, and reduce the compensation of the claimants to Rs. 3,34,000/- from Rs. 3,69,500/- besides interest at the rate of 12% from the date of filing of the claim petition till payment. Out of the awarded amount of Rs. 3,34,000/- and interest, a sum of Rs. 1 lac besides interest shall be paid to claimant No. 1, Rs. 1 lac each besides interest shall be paid to claimants 2 and 3, Rs. 34,000/- besides interest shall be paid to claimants 4 and 5 in equal shares. The amount of the share of the minors shall remain deposited in a scheduled bank till they attain the age of majority. Claimant No. 1 shall be entitled to interest due on the deposit of the amount of compensation awarded in the name of claimants 2 and 3 and shall utilise the amount of interest for the benefit of the minors. No order as to costs.

17. Appeal partly allowed.